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Central Administrative Tribunal, Principal Bench

Original Application No. 2400 of 1998

with

Original Application No. 2060/99

New Delhi, this the 5<sup>th</sup> day of December, 2000

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

Hon'ble Mr. M. P. Singh, Member (A)

U.C. Mishra

S/o Late Shri R. B. Mishra

Superintending Engineer,

Appropriate Authority

8th Floor, B-Wing, Janpath Bhawan,

Janpath, New Delhi-110 001.

- Applicant

(By Advocate - Applicant in person)

Versus

Union of India through

1. Secretary,  
Ministry of Urban Affairs &  
Employment,  
Nirman Bhawan,  
New Delhi-110 011.
2. Secretary,  
Union Public Service Commission,  
Dholpur House,  
Shahjahan Road,  
New Delhi-110 011. - Respondents

(By Advocate - Shri K. R. Sachdeva)

O R D E R

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

By this common order we will decide two OAs bearing No. 2400/98 and 2060/99 filed by the applicant challenging the select list for promotion to the post of Chief Engineer (Civil) for the years 1995-96 (OA No. 2060/99) and 1996-97 (OA No. 2400/98) inspite of the fact that many of the juniors in the seniority list of feeder grade of Superintending Engineer (Civil) have been included in the panel but the applicant's name was not included for promotion to the post of Chief Engineer (Civil).

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2. The applicant now alleges that non-inclusion for promotion to the post of Chief Engineer (Civil) is illegal, irregular and certain irregularities have been committed by the DPC proceedings held for empanelment for both these years. The applicant also claims that he has unblemished record inasmuch as no adverse entry of ACR was ever conveyed to him, so his non-inclusion is illegal.

3. The applicant also claims that he had been posted to North Eastern Region (hereinafter referred to as NER) and as per the DOP&T instructions a candidate who had posting in the NER during the period of his consideration, he has to be given an advantage for his posting in the NER. Besides that he has also pleaded that as per the provisions of the Recruitment Rules the DPC is required to take into consideration the previous 8 years' ACRs and if for any period no ACR has been written, then the DPC can go further to see the ACRs beyond 8 years so that the DPC may consider 8 years period and if a person has not worked in the feeder post in that event the DPC can go to look into the ACRs of the candidate even if he has worked at a lower post.

4. He further claims that in all 6.1/2 year of ACRs were available and only 6 of them were considered because others were only partly written and for this purpose, he has relied on para 6.2.1(c) of DOPT instructions on holding of DPC. He further claims that his 6 years ACRs were considered out of 8 years

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as stated by him in para 4.7.1 and as he had outstanding reports as well, so he should have been considered since those periods had not been considered so he has been illegally and arbitrarily ignored for being empanelled.

5. In the grounds to challenge his non-empanelment, the applicant has submitted that the Government is barred by the principles of promissory estoppel by not giving weightage in cadre promotion due to NER tenure and the Government had issued these instructions that added weightage is given to the posting in the NER and the same has not been done, so on that account the Government has violated the principles of promissory estoppel and thus the applicant has been considered equally with those officers under the zone of consideration who had not undergone a tenure in the NER.

6. The applicant has also pleaded that since he has never been conveyed any adverse remarks, so he cannot be deprived of promotion even if he had attained any report below the bench mark and for this purpose he has also relied upon a judgment of the Allahabad Bench in OA No. 1837/94 - Dual Krishna Vs. U.O.I wherein it has been held that "a good or average grading though per se not adverse would assume the character of adverse remarks in the context of the requirement of 'very good' bench mark to qualify for empanelment for promotion to JAG and above". He also claims that he had earlier also filed an OA bearing No.1904/96 and the directions given in that order has

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not been obeyed since the interim order was passed therein and the promotion order had been issued in violation of the same. Both the above OAs contained almost the same pleas.

7. The respondents while contesting both the OAs have stated that the post of Chief Engineer (Civil) is a selection post which is filled by promotion from the grade of Superintending Engineers with 3 years regular service and the applicant, who fulfils the eligibility criteria for promotion, had been considered for promotion to the post of Chief Engineer (Civil) by the DPC held on 1/2.8.1995 and further DPCs on 17.12.1997 and 17.9.98, but based on the assessment of service record he has failed to obtain the minimum prescribed bench mark of 'very good' for promotion to the post of Chief Engineer (Civil) and consequently his name could not be included in the panel. His juniors with better service record have been empanelled and promoted as Chief Engineer. It is denied that the DPC had committed any irregularity in making assessment of service record.

8. They have further stated that earlier also applicant had approached this Tribunal on the same ground that his posting at NER has not been considered and ACRs had not been considered vide OA No.1904/96 which was disposed of with certain directions. Consequent to that, a review DPC was held and due weightage of posting at Arunachal Pradesh as SE (Civil) from 18.8.96 to 31.12.1998 was given. The review Departmental Promotion Committee still did not

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recommend the name of the applicant for promotion to the post of Chief Engineer (Civil) and again the applicant has approached this Tribunal on the same ground.

9. It is further pleaded that the DPC held in UPSC on different dates and the Review DPC had reconsidered the case of the applicant on the basis of the extent rules and instructions on the matter and the applicant has no case at all to approach this Tribunal, hence the OAs have no merits and the same deserves to be dismissed.

10. We have heard the applicant in person and Shri K.R. Sachdeva, learned counsel for the respondents.

11. The applicant, who argued in person, has only two grounds to argue. First of all his period of posting at the NER had not been considered and secondly the ACRs for the broken period has not been properly taken into consideration and as such complete 3 years ACRs were not placed before the DPC and same had not been considered.

12. In reply to this respondents have submitted that since the DPC was fully informed about the posting of the applicant in the NER as well as the instructions of the Government of India regarding due weightage to be given to a candidate who had a posting in the NER and DPC is itself a master of the proceedings to be conducted by them and DPC has, in

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fact, considered all the documents and the instructions placed before them including the fact regarding the posting of the applicant in the NER. Similarly the DPC was also provided the relevant 8 years ACRs of the applicant and the DPC is within its right to assess the performance of a candidate and give its own grading as per the DOP&T's instructions itself, so it was pleaded that no illegality or irregularity has been committed by the DPC.

13. Besides that Shri Sachdeva, Counsel appearing for the respondents has submitted that as far as the second prayer in OA 2060/99 is concerned the applicant therein has prayed that he be declared fit for promotion by holding a fresh Review DPC and may be assigned appropriate seniority between Shri D.P. Goyal and Shri J.L. Khusu which means that the application is barred by non-joinder of those parties over which the applicant is claiming seniority.

14. After hearing the rival contention of the parties we had also called for the DPC records as requested by the applicant himself and have gone through the DPC records also. At the outset we may mention that the applicant in OA 1904/96 had earlier addressed his grievance against his non-inclusion in the select list of 1995 for promotion from the post of Superintending Engineer to that of Chief Engineer. In that OA also the applicant had claimed that his posting in NER was not considered and he had also claimed that his ACRs for full 8 years were not considered. In that case also the Tribunal had found

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that since proper 3 years ACRs had not been considered so that is why the OA was allowed and the Tribunal had directed the respondents to constitute a review DPC and a specific direction was given that full 3 years ACR of the applicant be considered.

15. In compliance with the said directions, a review DPC was constituted. We have also gone through the record of the review DPC and we find that the directions given in OA No.1904/96 has been fully complied with and the DPC note suggest that the DPC was informed about the posting of the applicant in the NER and the chart regarding ACRs also show that the ACRs had been fully furnished to the DPC. So we find on that ground the applicant cannot have any grievance that his case has not been considered in consonance with the directions given by this Tribunal in the earlier OA as well as in consonance with the instructions of the DOP&T with regard to the holding of the DPC. We have also gone through the DPC conducted for the subsequent years and the DPC note suggest that all the material having been made available to the DPC for consideration and the DPC after consideration had found that the applicant has not been able to make the bench mark so the applicant was not included in the panel.

16. Next ground of the applicant is that in accordance with the law laid down by the Allahabad Bench of the CAT, a person who has not attained the remarks of the ACR after the bench mark, was entitled to be conveyed the ACR remarks and non-communication

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of those ACRs is bad in law since the remarks which are below the bench mark are to be treated as adverse remarks as a candidate cannot get his promotion since his reports are below the bench mark.

17. As regards the remarks recorded in the ACRs is concerned, the counsel for the respondents submitted that he has not challenged any of the ACRs since according to the applicant himself the same were not communicated nor the applicant had alleged any bias against the Reporting Officer and it is only the DPC who have seen the overall performance of the applicant on the basis of not only the remarks but after going through the entire ACRs, have assessed the officer upto a particular grade and found that the applicant had not been able to reach the bench mark and since it was the assessment of the DPC, so the same was not communicated to the applicant.

18. We have also gone through the judgment relied upon by the applicant and we find that in that case the Tribunal at Allahabad Bench had made certain observations regarding the writing of the ACRs itself by the superior officer but in these OAs the applicant has not alleged any bias against his reporting officer nor any adverse report had been communicated to him. We have also gone through the ACRs and in most of the ACRs the applicant had either been graded as 'very good' or 'good' and the applicant was not entitled to be communicated these reports as per the extent rules.

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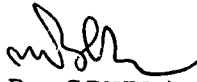



19. Moreover, the DPC, in case of the applicant consisted of high officials and UPSC was also associated in DPC. And as per instructions, DPC itself was to grade an official for the purpose of promotion by assessing the overall performance of a candidate. DPC was not to go merely by the ACRs rather DPC itself was competent to grade an officer 'outstanding', 'very good' or 'good' by assessing the overall performance of the officer irrespective of the grading recorded in ACR. As such, the ruling relied upon by the applicant is of no avail to him. Record also shows that DPC had adhered to all the rules and instructions on the subject.

20. Since the DPC had arrived at a grading of their own after going through the ACRs and assessing the performance of each candidate and as the DPC was not bound by the grading recorded in the ACR, the DPC had assessed the applicant on the basis of the overall performance, so we are of the considered view that the non-communication of the good ACRs to the applicant do not vitiate the DPC proceedings and the ruling cited by the applicant do not apply to the present facts of the case.

21. In view of the above, we are of the considered opinion that the OAs have no merits and the same are accordingly dismissed. No costs.

22. Let a copy of this order be placed in OA Nos. 2400/98 and 2060/99.

  
(M.P. SINGH)  
MEMBER (A)

  
(KULDIP SINGH)  
MEMBER (J)