

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.649/1997

New Delhi, this 28th day of June, 2000

Hon'ble Justice Shri V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

Amitava Lodh
Assistant
Dte. General of Ordinance Services
Master General of Ordinance Branch
Army Hqrs., OS 14
Room No.222, South Block, DHQ Post Office
New Delhi-11 .. Applicant

(By Shri Jog Singh, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Defence
South Block, New Delhi
2. Joint Secretary (Trg) & Chief Admn. Officer
Ministry of Defence
C-II Hutments
Dalhousie Road, New Delhi .. Respondents

(By Shri S. Mohd. Arif, Advocate)

ORDER(oral)
Smt. Shanta Shastry

The applicant has challenged the order dated 24.5.96 turning down his representation against non-inclusion of his name in the select list of Assistants (Group B non-gazetted) approved for appointment as Assistant Civilian Staff Officer (Group B gazetted) (ACSO, for short) in the Armed Forces Headquarters Civil Service (AFHCS, for short).

2. The brief facts are that the applicant was selected as Assistant through the Assistants Grade Examination held by the UPSC in the year 1982. He joined on 17.5.84 in the Naval Headquarters under the Ministry of Defence as a member of AFHCS. A meeting of the DPC was

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conducted in December, 1994 to finalise the list of candidates to be promoted in the grade of ACSO during the year 1995. Applicant being in the zone of consideration, his case was placed before the DPC. However, his case was deferred for want of latest Confidential Report (CR, for short). Thereafter, applicant's case for promotion as ACSO was considered by the DPC held on 18-21 December, 1995 along with other eligible candidates but the DPC did not recommend him for promotion. He was again considered for promotion for the year 1997 in the DPCs held on 23-24.12.86 and on 6.1.97. This time the applicant's case was kept in sealed cover as an appeal against his acquittal in a criminal case had been admitted in the Calcutta High Court. The matter was thereafter examined and the applicant was promoted on ad hoc basis with effect from 12.5.97 subject to the outcome of the appeal pending in the High Court of Calcutta.

3. It is the case of the applicant that since he was eligible for promotion in the DPC meeting held in December, 1994 his case should have been considered and not deferred. At the most since a criminal case was pending against him his case could have been kept in a sealed cover but the respondents did not do so. Learned counsel for the applicant argued that only CR for the year 1993-94 was not available. In the circumstances, instead of deferring his case, the DPC should have considered the CR of the preceding year as per the instructions issued by the Government of India in OM dated 10.3.89 of DoP&T.

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4. Learned counsel for the applicant further submits that though there was a criminal case against the applicant wherein he was charged-sheeted on 28.7.94, he was on anticipatory bail and finally he was acquitted on 26.4.95 by the Addl. Session Judge, Alipur. Further he argued that applicant remained on leave from 3.8.93 to 13.7.95 and therefore his CR for 1993-94 could not be readily made available. He therefore strongly pleads that applicant's case should have been kept in a sealed cover.

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5. Learned counsel for the respondents has confirmed the facts and he submits that the decision to defer his case by the DPC was because latest CR of the applicant for the period 1993-94 was not available and also because the applicant was unauthorisedly absent and the same was under investigation.

6. The only short point for determination in this case is whether the action of the DPC in deferring consideration of the case of the applicant in December, 1994 was in order.

7. We have heard both the learned counsel for the applicant as well as the respondents and have perused the pleadings as well as the relevant proceedings of the DPC held in December, 1994. The only reason as to why the applicant's case was not considered was that he was absent unauthorisedly and his ACR for one year was not made available. The relevant records relating to the proceedings of the DPC were produced by the respondents. It is seen from the DPC proceedings that

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the DPC observed that the applicant had absented himself since 13.10.93 after his relief on completion of deputation period. Due to non-availability of latest CR and his unauthorised absence which was under investigation, DPC deferred his case. We have given careful consideration to the submissions made. We find that the Government of India has issued clear instructions on how to conduct the DPC proceedings and the procedure to be followed. These instructions have given specific guidelines on what is to be done if the CR for a particular period is not available. As already pointed out by the learned counsel for the applicant. Para 6.2.1(c) of the instructions of DOP&T dated 10.3.1989 clearly states that if a CR is not available, then the DPC should go back and consider CR of the year preceding the period in question. In this case, the DPC could therefore have considered the CR for the year preceding five years period under consideration. Also the reason that applicant was unauthorisedly absent and the matter was under investigation cannot be a ground for not considering the case of the applicant. First of all the matter was only under investigation. There was no departmental enquiry or any charge-sheet issued to the applicant in the matter. As such there was no reason why his case should not have been considered.

8. In para 11 of the same instructions the procedure to be followed by DPC in respect of a government servant under cloud has been explained. Therefore if any charge sheet had been issued to the applicant, the matter could have been kept in a sealed cover. In fact a charge sheet had been issued to the applicant in a criminal

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case during that period. However, the DPC has not mentioned about the same in its proceedings. This however does not appear to have been brought to the notice of the DPC as is evident from the proceedings. Whichever way we look at, we feel that the action of the DPC in deferring the case of the applicant is not justified when other course of action was available to the DPC. We are not concerned with the later DPCs as it was in the first DPC held in 1994 which was material. At the most the case would have been put in a sealed cover. This procedure has also been highlighted by the Hon'ble Supreme Court in the case of UOI etc. Vs. K.V.Janakiraman, JT 1991(3) SC 527 wherein the apex court has clearly observed that it is only when the charge memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. If we consider that the applicant's case of unauthorised absence was under investigation, there was no need to follow the sealed cover procedure or defer the case. The DPC should have proceeded on the basis of the available CR. If we take into consideration the charge-sheet issued to the applicant in the criminal case in which he was acquitted later on, then as per the judgement of the Hon'ble Supreme Court in K.V.Janakiraman's case (supra) the matter should have

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been placed in a sealed cover. The apex court has also observed further in the same case that if the employee is finally exonerated in a criminal case/disciplinary proceedings and is not visited with the penalty even of censure, he should not have been deprived of any benefit including the salary of the promotional post. In this case the applicant was acquitted and therefore he was due for consideration for promotion. Even after this, he was not recommended for promotion by the DPC held in 1995 and in 1996. (16)

9. At this stage, the learned counsel for the applicant brings to our notice the judgement of this Tribunal in the case of M.V.Bansal & Ors. Vs. UOI in TA 356/85 decided on 20.11.92 after which the applicant's seniority had to be recast subsequently. As per applicant's altered seniority, he would not have been in the zone of consideration for promotion even in the year 1995, let alone in 1994. The relevant judgement has not been made available at this point of time. Though at a later point of time the applicant might have lost his seniority, in December, 1994 when the applicant's case was before the DPC for consideration, the judgement could not be the basis for deferring the case of the applicant. In that event the entire DPC proceedings would have had to be deferred. The applicant's case was singled out and was deferred for the reasons already mentioned namely unauthorised absence and non-availability of the relevant CR. There was no mention of the judgement cited now. This being so, we are unable to go by the argument made by the learned counsel for the respondents at this stage.

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10. In the facts and circumstances of the case, we find that deferment of consideration of the applicant by the DPC held in December, 1994 was not justified. We therefore direct the respondents to hold a review DPC of December, 1994 and to reconsider the case of the applicant on the basis of the available CRs as per the instructions of the Government of India as laid down in the OM dated 10.3.89 in para 6.2.1(c) (supra). This may be done within a period of three months from the date of receipt of a copy of this order.

11. In the result, the impugned order dated 24.5.96 is set aside and the OA is disposed of as aforesaid. No costs.

Shanta S
(Smt. Shanta Shastry)
Member(A)

V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice-Chairman(J)

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