

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA/100/1603/2020

New Delhi, this the 21st Day of October, 2020

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mrs. Aradhana Johri, Member (Admn.)**



Avinash Dikshit,
Presently posted as Principal Integrated Financial Advisor
In the office of Principal Integrated Finance Advisor
(Army-Ordnance), Ministry of Defence, Govt. of India
S/o Late R.C. Dikshit,
Aged- About 56 years,
R/o C-1/47, Bapa Nagar,
New Delhi-110003.

...Applicant

(By Advocate : Mr. A.K. Behera)

Versus

1. Union of India, Through the Secretary,
Ministry of Defence (Finance),
South Block, New Delhi-110001.
2. The Secretary,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances and Pensions
North Block, New Delhi-110001.
3. The Controller General of Defence Accounts,
Ulan Batar Road, Palam, Delhi Cantt., New Delhi-110010
4. Union Public Service Commission, Through its Secretary,
Dholpur House, Shahjahan Road, New Delhi-110011.
5. Ms. Rasika Chaube, IDAS (1986)
Service to be effected through:
The Controller General of Defence Accounts,
Ulan Batar Road, Palam, Delhi Cantt., New Delhi-110010.
6. Mrs. Bulbul Ghosh,
Former Controller General of Defence Accounts (Now retired)
Service to be effected through:
The Controller General of Defence Accounts,
Ulan Batar Road, Palam, Delhi Cantt., New Delhi-110010.

...Respondents

(By Advocates: Shri Sanjeev Yadav for Respondents No. 1 to 3 and
Shri Naresh Kaushik for Respondent No. 4)

ORAL ORDER
{By Hon'ble Sri Justice L. Narasimha Reddy, Chairman}

The applicant is an officer of Indian Defence Accounts Service (IDAS), 1986 batch. There were 9 other officers, who too were selected and appointed along with the applicant. In the merit list of the batch, the applicant figured at Sl. No.5.



2. The promotion to the Junior Administrative Grade (JAG) for the vacancy year 1995-96 took place on 19.12.1995 and the officers of 1986 batch were considered. The DPC adopted the criterion of placing the officers with ACRs assessed as 'Outstanding' at the top, and those with gradation of 'Very Good', next to them. In the process, the applicant, who was at Sl. No. 5 in the senior list was put at Sl. No.2, whereas the Respondent No.5 who was at Sl. No.1 in the seniority list, was pushed down to Sl. No.5. Certain other changes have also taken place. The 5th respondent filed a representation to the Controller General of Defence Accounts, the 3rd respondent, who is the competent authority, regarding her ACRs. It was stated that though the Recording Officer has rated her as "Outstanding", Reviewing Authority downgraded it to the level of "Very Good" without basis. Through an order dt. 30.11.2009, the 3rd respondent directed that the gradation of the 5th respondent for the years 1991-1994 shall be treated as 'Outstanding' and that the remarks made by the Review/Accepting authority be treated as honest.



3. The 5th respondent filed OA No. 3345/2015 challenging the change of seniority or ranking in the JAG. The OA was allowed on 18.08.2017. The order of the Tribunal was upheld by the Hon'ble High Court of Delhi in WP No. 9694/2017. In compliance with the order passed by the Tribunal and the Hon'ble High Court, a review DPC was held on 10.06.2020 and a review panel was issued duly retaining the seniority of the officers in accordance with the rankings assigned by the UPSC at the stage of induction into seniority. As a result, the applicant was shown at Sl. No.5 and the 5th respondent at Sl. No.1.

4. This OA is filed challenging the order dt. 30.11.2009 passed by the 3rd respondent in favour of the 5th respondent and order dt. 28.07.2020 through which the seniority in the panel for promotion to JAG was altered.

5. The applicant contends that the DPC which met on 19.12.1995 has taken into account, the parameters, stipulated for the purpose of promotion and accordingly, arranged the officers depending upon the ratings in the ACRs. He submits that a valuable right has accrued to him on the basis of the ranking/ seniority assigned to him in the JAG and in fact, it constituted the basis for further promotions also. He submits that the 3rd respondent was not justified in issuing the order dt. 30.11.2009 changing the gradation of the ACR of the 5th respondent and it has an adverse effect upon his career. It is also his case that the order dt. 28.07.2020 was passed without any legal or factual basis, and at any rate, without notice to him.

6. We heard Mr. A.K. Behera, learned counsel for the applicant; Sri Sanjeev Yadav, learned counsel for the respondents 1 to 3 and Sri Naresh Kaushik, learned counsel for the respondent No.4 at the admission stage, in detail.



7. The basic facts which have given rise for the filing of this OA are mentioned in the preceding paras. It is a matter of record that the applicant figured at Sl. No.5 in the seniority list of the officers of 1986 batch. DPC for promotion to JAG was held on 19.12.1995, and 10 officers of 1986 batch of IDAS were considered for that purpose. The panel that was placed before the DPC, reflected the ranking assigned by the UPSC at the stage of induction. However, the officers whose grading of ACR is Outstanding were placed in the top and those with 'Very Good' were placed below them. In the process, places of 5 officers including that of the 5th respondent were pushed down and those of 3 officers, including the applicant have gone up. Once the 5th respondent came to know that she suffered in terms of the seniority at the stage of promotion of JAG, she made a representation to the competent authority i.e. 3rd respondent. The representation was considered and an order was passed on 30.11.2009, which reads as under:

“Dated: 30th November 2009

To

Smt. Rasika Chube, IDAS,
Internal Financial Adviser,
President's Secretariat,
Rashtrapati Bhawan,
New Delhi.

Subject: *Representation against ACRs of the 1990-91 through 1994-95 and against the supersession / loss of seniority at the level of JAG in Indian Defence Accounts Service (IDAS)*



The undersigned is directed to inform that the competent authority viz., the Controller General of Defence Accounts has considered your representation bearing No. RC/Pers/3-2009 dated 19th November, 2009 and has decided as under:

Period of CR	Decision of CGDA
01.04.1991 to 31.03.1992	<i>The remarks/ grading of the review/ accepting authorities in these CRs may be treated as non est and the grading given by the reporting officer(s) as “Outstanding” shall prevail.</i>
01.04.1992 to 31.03.1993	
01.04.1993 to 30.06.1993	
01.07.1993 to 31.03.1994	
01.04.1994 to 31.03.1995	<i>Since the laid down reporting channel has not been followed for writing of the CR, hence the report for the year may be considered as void.</i>

2. As a consequence to the above decision of the CGDS, Ministry of Defence (Finance) is being requested to request the UPSC to convene a DPC meeting to review the DPC of 19.12.1995, which considered your name for promotion to the Junior Administrative Grade of the IDAS. Your seniority will depend upon the outcome of the review DPC.

Sd/xxxx
(Subhas Mondal)
Asstt. CGDA (Admn.)”

8. The relief granted through this order is purely personal to the 5th respondent. It is just understandable as to what grievance, the applicant can have about it. Once her ACR was upgraded, the 5th respondent made representations with a request to restore her place in the seniority list of JAG. It was after long wait, that she filed the OA 3345/2015. The OA was allowed and the order passed therein was upheld by the Hon'ble High

Court. The result was that, the 3rd respondent was under obligation to convene a review DPC and to undertake an exercise in accordance with the order passed by the Tribunal. It was only as a measure of compliance of the direction issued by the Tribunal and the Hon'ble High Court that the impugned order was passed on 28.07.2020.



9. Except that the rankings of officers were restored to be the same, as those in the panel placed before the DPC, not a single promotion was disturbed. The applicant, who was pushed up from 5th place to the 2nd place, was just brought to his original place. No prejudice can be said to have been caused to him. It may be true that, he occupied a senior place in comparison to the 5th respondent over the years. That, however, was purely a provisional as long as the rating of the ACR of the 5th respondent was 'Very Good'. Once the ACR was brought to the level of 'Outstanding', she has every right to be restored to her original place i.e. No.1 in the seniority list. No indefeasible right can be said to have accrued to the applicant vis-à-vis the 5th respondent, in the facts and circumstances of the case.

10. We do not find any merit in the OA and the same is accordingly dismissed. No order as to costs.

ARADHANA JOHRI
MEMBER (ADMN.)

JUSTICE L. NARASIMHA REDDY
CHAIRMAN