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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 1752/90.

Date of decision. 27-10-94

Hon'ble Shri N.V. Krishnan, Vice-Chairman (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Vijay Kumar Masaon,
S/o late Shri Dharam Vir,
R/o RZ-16, Madanpuri,
West Sagarpur, New Delhi-46.

(Working as UDC in the
Army Headquarter,
Military Secretariat Branch),
4-C-2 Section, South Block,
New Delhi-110 011.

... Applicant

Shri
(By Advocate/B.K. Aggarwal)

versus:

Union of India through
the Chief Administrative Officer (Admn.),
Ministry of Defence,
DHQ Post Office,
New Delhi-110 011.

.. Respondents

(Shri Ramalingam, Departmental Representative
on behalf of Respondents)

O_R_D_E_R

[Hon'ble Smt. Lakshmi Swaminathan, Member (Judicial)] 7

The applicant, who is working as an Upper
Division Clerk in the Army Headquarters, is aggrieved
that his name does not appear in the promotion list
to the grade of Assistant published by letter dated
9.1.1990 (Annexure A-1). His representation against
the non-inclusion in the promotion list has been
rejected vide letter dated 23.1.1990 (Annexure A-3).

2. The brief facts of the case are that the

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applicant has been working as U.D.C. from 18.9.1979 and he was placed at S.No. 41 in the seniority list of U.D.Cs. (Annexure A-4). A D.P.C. has been held on 22.12.1989 for promotion to the grade of Assistant. The applicant states that the promotion list (Annexure A-1) contains the names of all his seniors from S.Nos. 1 to 40 and juniors from S.Nos. 41 to 85 but his name has been ignored. He states that there was nothing adverse in his record till May, 1988 as nothing was communicated to him. On 2.6.1988, the following adverse entries made in his ACR ending December, 1987 have been communicated to him :-

1. Para 9 - " Can improve upon his punctuality".
2. Para 11 - "Has been warned in writing for punctuality on one occasion only."

He made a representation on the above remarks on 29.6.88 (Annexure A-6). According to the applicant, his representation dated 29.6.88 is still pending as no reply has been received from the competent authority and, hence relying on the case of Annpal Kapoor v. State of Punjab (Pb. & Hry.) [1973(1) SLR 989], the D.P.C. while considering his case for promotion, could not take notice of these adverse remarks. He has also relied on another case Dilip Kumar v. State of Madhya Pradesh [1984(1)SLR 58] to show that his pending representation dated 29.5.1988 had also not been

placed before the DPC at the time of consideration of promotion which vitiates the recommendation of the Promotion Committee.

3. The main grounds taken by the learned counsel for the applicant are that:-

- (1) Since his appeal/representation dated 29.6.1988 was pending, the adverse entries for 1987 could not be taken into account by the D.P.C. when considering his promotion to the post of Assistant;
- (2) there was no supporting material on the basis of which the adverse remarks could have been recorded ; and
- (3) that the representation had not been disposed of within three months according to the instructions issued by the Government of India, Ministry of Home Affairs.

For the above reasons, the applicant claims that the action of the respondents is arbitrary and illegal.

4. The respondents, in their reply, have stated that the applicant's case for promotion to the grade of Assistant was considered by the DPC in December, 1989. His ACRs for the last five years i.e. 1984 to 1988 were considered and he was graded "not yet fit" for promotion. In para 8 of their reply, they have given the remarks in the ACRs for the years 1984 to 1988 as follows :-

1984 .. Very Good
1985 .. Average with adverse remarks as to punctuality. - Not upto the mark. He has been advised several times to improve it. A good typist who at times produces fairly good results. He needs to be punctual in attendance and must attend office in time. Has become undependable because of his unpunctuality and late coming.

(b)

1986	...	Good	
1987	...	Average with adverse remarks under the headings of 'Intelligence, Keeness and Industry. Punctuality in attendance.	There is scope for motivation/keenness and industry. Rather unpunctual in his attendance
1988	...	Good	

5. The respondents state that the adverse remarks in the ACR for the year 1985 was duly conveyed to the applicant in note dated 28.4.1986 (Annexure R-1). The applicant made ^a representation against these adverse remarks, which was duly considered and rejected by the competent authority (Annexure R-II). Regarding the adverse remarks in the ACR for the year 1987, the respondents have stated that in the first instance they were conveyed to the applicant by the Reporting Officer himself which was not in accordance with the DOP&T's instructions dated 10.4.1989. Therefore, the Reviewing Officer, being the appropriate officer, conveyed the adverse remarks in the ACR of 1987 to the applicant on 7.9.1988 (Annexure R-III). In this communication, the applicant was specifically informed that if he wishes to submit any representation against the adverse remarks, he may do so within one month of the date of receipt of the memo. According to them, the applicant did not file any representation against

the adverse remarks conveyed to him on 7.9.1988. In the circumstances, they contend that the applicant's statement that his representation dated 29.6.1988 against adverse remarks in the ACR of 1987 was still pending and hence these adverse entries should not have been taken into consideration for promotion to the grade of Assistant. The respondents have relied on the following judgments, namely -

- (i) C. Rajendran v. UOI [1992(20)ATC 787]
- (ii) State of Madhya Pradesh v. Srikanth Chaphekar [1993(23)ATC 377]
- (iii) Krishan Lal v. J&K [1994 (2) SLJ 64]

6. We have carefully considered the arguments of the learned counsel for the applicant, Shri B.K. Aggarwal, and of the departmental representative, Shri Ramalingam and seen the records in the case.

7. So far as the adverse remarks in the ACR of the applicant for the year 1985 is concerned, the same had been communicated to him and his representation considered and rejected by the competent authority vide order dated 14.8.1986. The main grievance of the applicant is with regard to his representation dated 29.6.1988 against adverse remarks in the ACR of 1987, to which

he has not received any communication so far.

In this representation, he has, inter-alia, alleged that the Reporting Officer was not competent to write his ACR as he was not working under him and that it has not been properly reviewed by the competent reviewing officer.

8. The respondents have denied these averments in their reply. In the Memo. dated 7.9.1988 communicating the remarks in the ACR for the year 1987, the respondents had not only communicated the adverse remarks but they had also noted that the applicant possessed sound health and fair intelligence and his speed and accuracy in typing are very good. This memo. has been acknowledged by the applicant on 7th September, 1988 and he could have made any representation he might want to make against the adverse remarks, which he failed. The respondents have admitted that since the earlier communication of the adverse remarks in the ACR for the year 1987 have been conveyed to him by the Reporting Officer, and not by the Reviewing Officer, on 2.6.1988 (Annexure A-5), they had subsequently sent proper him the communication dated 7th September, 1988.

No doubt,
9. / the respondents could have indicated in the Memo. dated 7.9.1988 that the earlier communication dated 2.6.88

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was cancelled but that by itself does not make the Memo. dated 7.9.1988 invalid and inoperative. The applicant ought to have filed a reply to the later Memo. raising any ground he may wish to do regarding the adverse remarks in the ACR for the year 1987 for consideration of the competent authority. Having failed to do so, he cannot take advantage of his own omission.

10. In the facts and circumstances of the case, the applicant's representation dated 29.6.1988 does not survive and it cannot be held that his representation was pending at the time when the DPC met in December, 1989. In the light of ^{the} other grounds taken by the applicant do not survive. Therefore, the applicant's claim that all the relevant material, including his pending representation dated 29.6.1989, had not been placed before the DPC is without any basis and is rejected. The DPC has evaluated the service records on the basis of the documents available before it and following the decision of the Hon'ble Supreme Court in State of Madhya Pradesh v. Srikanth Chapekar (Supra), this Tribunal cannot look into the same record and assume the

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function of the D.P.C. or direct promotion of the applicant.

11. In the result, the application fails and is dismissed. There will be no order as to costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)

Member(J)

N.V. Krishnan
27/4/84
(N.V. Krishnan)

Vice Chairman (A)