

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2612/90

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T.A. No.

DATE OF DECISION 11.10.91.Shri R.C. Singh

Petitioner

Shri B.S. Mainee

Advocate for the Petitioner(s)

Versus

Union of India & Others.

Respondent

Shri R.M. Bagai

Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice Chairman(J).

The Hon'ble Mr. B.N. Dheundiyal, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

(of the Bench delivered by
Hon'ble Member Shri B.N. Dheundiyal)

This OA has been filed by Shri R.C. Singh who has worked as Works Manager(STS) in the Gun Carriage Factory, Jabalpur, under Section 19 of the Administrative Tribunals Act, 1985, against an adverse entry in his ACR for the period 01.04.1988 to 31.03.1989, which is alleged to have adversely affected his case for promotion.

2. The applicant was appointed as Assistant Manager on 08.01.1979 through UPSC. He was promoted as Works Manager on 21.2.83 and had been working at Machine Tools Prototype Factory, Ambarnath from 01.12.1984. Presently,

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he is undergoing National Management Programme training, at Management and Development Institute, Gurgaon under the scheme sponsored by the Department of Personnel and Training. The adverse entry in his ACR communicated to him vide Memorandum dated 9.7.89 was as follows:-

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- (a) You should take your work more seriously.
 - (b) You are reluctant to follow guidelines and at times you are very obstinate."

3. The applicant claims that the above entry was given to him, out of vindictiveness and bias by the Deputy General Manager, Shri A.O. Abraham. In support of his contention, he has appended copies of correspondences exchanged between him and the authorities to show that there were differences between him, who was working on the maintenance side and those working on the production side. A communication containing the adverse entry was received by him on 08.08.1989 against which he submitted a representation to the Secretary Ordnance Factory Board, Calcutta on 26.8.89. His representation was considered and rejected by the respondents after a lapse of 17 months on 01.02.1991. Meanwhile, a DPC was held for promotion to the post of Deputy Manager. A posting order issued on 15.06.1990 shows that as many as 54 officers junior to him had been promoted as Deputy General Managers while his name had been omitted from the said list of promotees. He represented on 12.07.1990 against the denial of promotion but had not received any reply so far. He has contended that it was wrong for the DPC to have taken into account an adverse entry which was yet to become final and has prayed that these entries may be expunged and the respondents may be asked to hold a review DPC to consider his case for promotion.

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4. The respondents have contended that the assessment of the applicant had been made by the Deputy General Manager (Production) without any bias and strictly on merits. The ACR recorded by the Reporting Officer was confirmed by the Reviewing Officer and the Accepting Officer, and he was duly informed about the same. His representation against the ACR was considered by the Director General of Ordnance Factory/Chairman and the decision to reject his representation was intimated to him vide Memorandum dated 01.02.1991. The applicant cannot make any grievance against non-promotion to the post of the Deputy Manager since the same is a selection post. His name along with his service records was duly considered by the DPC which was presided over by a Member of UPSC. The assessment made by the DPC is not based on a single ACR but is based on assessment of the service records over the years as compared to other candidates in the zone of consideration. Gradations are made on the basis of the comparative merit assessed by a duly constituted DPC whose recommendations have been approved by the competent authority.

5. We have gone through the records of the case and have heard the learned counsel for both the parties. While conveying the adverse remarks to the applicant, the Director-General Ordnance Factory stated in his memorandum dated 09.07.1989 that the short comings were communicated with a view to afford an opportunity to overcome them and give a better performance. This fact has been reiterated in the Memorandum dated 01.02.1991. The copies of correspondence produced by the applicant also indicates that he was being warned to improve his performance from time to time. The

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ACR also mentions the good qualities of the applicant. The applicant has not substantiated the allegation of malafide or arbitrariness on the part of the respondents. There is no force in the applicant's contention that the order dated 1.2.91 rejecting his representation is bad in law on the ground that it is a non-speaking order. It has been held by the Supreme Court in Union of India & Ors. Vs. E.G. Nambudari, 1991(1) SCALE 783, that "if the representation is rejected after his consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting the representation mainly on the ground of absence of reasons."

6. Another relevant aspect is that the DPC takes into account the comparative overall performance of those in the zone of eligibility for a selection post.

7. The further point under consideration is whether an ACR containing adverse remarks in respect of which a representation has been made and which was pending with the authorities concerned could be considered by the DPC, while adjudging the suitability of a person for promotion.

The following observations were made by the Hon'ble Supreme Court in the case of Gurdial Singh Fijji Vs. State of Punjab 1979(3) SCR 518) are relevant:

"The principle is well settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned, so that, he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report."

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8. In the instant case, the representation submitted by the applicant was pending with the authorities concerned, when the DPC met in 1990. To that extent, the proceedings of the DPC are vitiated. Accordingly the application is partly allowed and it is disposed of with the direction to the respondents to hold a review DPC to consider the case of promotion of the applicant without taking into account the adverse ACR of 1988-89. If the applicant is found suitable, he should be promoted as Deputy General Manager and be entitled to all consequential benefits including seniority above his next junior and the difference in pay and allowances from the due date. The respondents shall comply with the above directions within a period of three months from the date of communication of this order.

9. There will be no order as to costs.

B. N. Dhoundiyal
(B.N. DHOUNDIYAL) 11/10/91
MEMBER (A)

P. K. Kartha
(P.K. KARTHA) 11/10/91
VICE CHAIRMAN (J)