

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 376/88
T.A. No.

199

DATE OF DECISION 5.9.1990.

Shri Jarnail Singh	Petitioner Applicant
Shri B.B. Raval	Advocate for the Petitioner(s) Applicant
Versus	
Union of India & Another	Respondent
Shri P.H. Ramchandani	Advocate for the Respondent(s)

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

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal?

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The applicant, who is working as an Assistant Central Intelligence Officer (ACIO) Grade II in the office of the Intelligence Bureau at Amritsar, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for a direction to the respondents to treat him promoted to the rank of ACIO-I from the date his junior, Shri Darshan Kumar, was so promoted. He has also prayed for award of exemplary cost for the application. The pleadings in this case are complete. The application has not been admitted. We feel that the application could be disposed of at the admission stage itself and we proceed to do so.

2. The applicant joined Government service as Junior Intelligence Officer, Grade I in 1969, in which post he was confirmed in 1972. The next higher post is that of Assistant Central Intelligence Officer, Grade II which is a non-selection post. The applicant filed a suit in the Court of Sub-Judge, First Class at Amritsar, seeking a declaration to the effect that as his juniors were promoted earlier than him, he should be deemed to have been promoted from 6.10.1977 to the next higher post of ACIO-II. The Court held that he was deemed to have been promoted to the post of ACIO-II from 1.4.1978 and not from 6.10.1977, as prayed for by him.

3. Aggrieved by the above judgement dated 9.4.1985, the applicant as well as the respondents ~~Q~~ ^Q as well as the respondents ~~Q~~ ^Q applicant/preferred ~~appeals~~ ^{appeals} to the Court of District Judge, Amritsar, which stood transferred to the Chandigarh Bench of this Tribunal under Section 29 of the Administrative Tribunals Act, 1985. The Chandigarh Bench of the Tribunal dismissed the appeals on 10.6.1987. The Union of India has filed an appeal in the Supreme Court against the aforesaid judgement of the Chandigarh Bench of the Tribunal dated 10.6.1987 and the same is pending. On 21.3.1988, the Supreme Court passed an interim order to the effect that there will be stay of the operation of the order under appeal.

4. The relevant recruitment rules provide for promotion of ACIO-II with not less than five years' service in the grade to the grade of ACIO-I on the basis of "merit alone" upto the maximum of 5 per cent of the vacancies. This provision is intended to enable the department to recognise the services of those officers whose performance is of such extraordinary nature as to justify the reward of 'out of turn'

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promotion to the next higher rank. While Shri Darshan Kumar, who is junior to the applicant by more than 250 numbers in the Seniority List of ACIO-II, has been promoted on 'out of turn' basis to the rank of ACIO-I, the applicant was not so promoted. This constitutes his grievance.

5. The contention of the applicant is that he is an outstanding Intelligence Officer, and that he has earned several cash awards and commendations during his service. He has alleged that due to his outstanding success in conducting very delicate intelligence operations in Punjab, he had received a threat from the Khalistan Commando Force, causing a lot of mental anxiety to him and to the members of his family. His wife had to be treated by Psychiatrists and she had to be admitted to the Psychiatric Ward of Guru Nanak Dev Hospital for 1½ months. He feels that the respondents are discriminating against him on the ground of his religion. He has also alleged that the respondents are nurturing a grudge against him for having resorted to litigation in the Court regarding his promotion. He has also alleged that Shri Darshan Kumar does not deserve 'out of turn' promotion.

6. The contention of the respondents is that the applicant has no legal right for automatic 'merit promotion'. Under the relevant rules, the cases of officials recommended by different Units Incharge, are further considered by a Departmental Promotion Committee constituted for the purpose of drawing a list of deserving officials. In the case of the applicant, his name was not recommended by his

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Unit Incharge. They have also denied his contention that he has been an outstanding officer. They have stated that Shri Darshan Singh was duly recommended for 'out of turn' promotion by the I.B. Headquarters, and that he was found fit by the D.P.C. held on 21.7.1987.

7. We have carefully gone through the records of the case and have considered the rival contentions. The applicant has not challenged the recruitment rules providing for 'merit promotion' to the extent of 5 per cent of the vacancies. The rules require the Unit Incharge or the Officer Incharge under whom a person is working to recommend the name of a person for consideration by the D.P.C. for 'out of turn' promotion. There is nothing on record to indicate that the name of the applicant was so recommended by his Unit Incharge.

8. The respondents have placed before us the ACRs of both the applicant and Shri Darshan Singh and we have glanced through them. There is, no doubt, an element of subjectivity in assessing the worth of an officer on the basis of his performance as reflected in the ACRs. In *Amar Kant Choudhary Vs. State of Bihar & Others*, 1984 SCC (L&S) 173 at 178, the Supreme Court has observed that the Government should examine whether the present system of maintenance of confidential rolls should be continued. Certain observations have been made in this regard for consideration by the Government. At the same time, the Supreme Court observed that "Courts can give very little relief in such cases. The Executive itself should, therefore, devise effective means to mitigate the hardships caused to the officers who are subjected to such

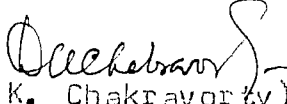
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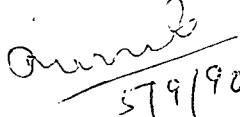
treatment. These questions require to be examined afresh in the light of the experience gained in recent years and solutions should be found to eliminate, as far as possible, complaint against misuse of these powers by official superiors who may not be well disposed towards the officer against whom such action is taken. It is needless to state that a non-disgruntled bureaucracy adds to the efficiency of administration."

9. In the absence of any other system of appraisal of the worth of an officer, the assessment reflected in the ACRs continues to remain the basis for assessment. The assessment by the D.P.C. about Shri Darshan Singh's suitability for 'out of turn' promotion on the basis of his ACRs, cannot, therefore, be faulted.

10. In the facts and circumstances of the case, the application is devoid of any merit and the same is dismissed at the admission stage itself.

There will be no orders as to costs.


(D.K. Chakravorty)
Administrative Member
5/9/1990


(P.K. Kartha)
Vice-Chairman (Judl.)
5/9/90