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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 249/91

New Delhi, this the 18th day of April, 1995

Hon'ble Shri J.P. Sharma, Member (J)
Hon'ble Shri B.K. Singh, Member (A)

Shri V.M. Natarajan,
s/o Shri Maranaicker,
Lower Division Clerk,
employed at
Dy. Dte. General of Military Farms,
QMG's Branch, Army HQ,
West Block No.3, R.K. Puram,
New Delhi. Applicant

By Advocate: Shri P.I. Doman

Vs.

Union of India, through

1. The Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. The Joint Secretary (Ad) &
Chief Administrative Officer,
Office of the JS (Ad) & CAO
Ministry of Defence,
C-II, Hutmants,
New Delhi. Respondents

By Advocate: Departmental
Representative

ORDER (ORAL)

Hon'ble Shri J.P. Sharma, Member (J)

The applicant was approved for appointment
as Lower Division Clerk and the post he joined
sometimes in October, 1982 with Respondent No. 2.
For certain reasons the applicant could not
effectively discharge the duties of L.D.C. in
the years 1986, 1987 and 1988 for 297 days, 365 days

and 366 days respectively. He joined on 9.7.89
did not
and he works for 190 days in the year and he
remained absent for 190 days in that year. He,
therefore, remained out of duty from 10.03.86 to
10.07.89. The applicant was also served with a
memo. of chargesheet on 24.11.89 but that appears
to have not been pursued by the Department since
he joined the duties and a liementview was taken.

A D.P.C. was held in the year 1989 wherein
certain juniors to the applicant were given regular
post of U.D.C. and list of such promotee is annexed
with the O.A. which is Appendix 'A' to CAO'S Office
Note dated 2.1.1990. The name of the applicant
is missing in the aforesaid list while in the
senioritylist the applicant's name is at S.No.6.
While in the aforesaid Note of 2.1.90 the persons
who are at S.No.1 and onwards have been given
their promotion. The promotion from L.D.C. to
U.D.C. is governed by the Recruitment Rules where
eligibility condition is provided of 5 years service
in the grade after confirmation and the applicant
was confirmed in his appointment on 31.12.85.
Though the applicant was not promoted, he made a
representation and filed this application on

24.1.90 prayed for the grant of the reliefs that a Review DPC be convened in respect of the applicant and he be considered as per the senioritylist and if found suitable he should be given promotion as per the senioritylist dated 17.11.89 with all further consequential reliefs and benefits.

On notice the respondents contested this application and stated that the applicant himself is at fault as he absented himself from duty from 10.3.86 to 10.7.89. In view of this, the Annual Confidential Roll of the applicant for the period was not written because of the administrative instructions that a minimum period of 3 months is required for an officer to be watched and if the applicant did not serve any officer for 90 days so none of the supervisor officer has given any report of the applicant for the working period from 10.3.86 to 10.7.89. The name of the applicant was placed in the DPC but he could not be considered for want of the ACR for the years 1986 to 1989 and as such the DPC has not considered him fit for promotion while his juniors Shri Ganesh and others were given promotion to the grade of U.D.C. Thus according to respondents the applicant has no case. However,

it is also stated that the applicant has since been given promotion on the basis of recommendation second of the DPC from January, 1992, it is also stated by the Senior Administrative Officer that the applicant is still not attending to his duties of UDC for the last $2\frac{1}{2}$ years but a communication is often received from the applicant for his transfer to Southern part where he is residing i.e. in Madras.

The applicant has also filed the rejoinder reiterating the facts stated in the application and also certain guidelines for holding of DPC has been filed.

We have heard Shri P.I. Domman, learned counsel for the applicant at considerable length. The learned counsel has read out the Recruitment Rules highlighting the fact that the Recruitment Rules do not provide for looking to the ACRs and only for a non selection post a person who has worked for 5 years in the grade of LDC and has not been given adverse report should be given promotion subject to qualifying in the eligibility notified in the Recruitment Rules. To some extent we are in agreement with Shri Domman but the DPC has to assess the fitness

of a person in non selection post also. The DPC consists of a number of officers who may not have seen the working of concerned employee and therefore their opinion is based primarily on the entry made by the Reporting Officer seen by the Review Officer and Accepting Officer in the ACR. The guidelines issued by the DOPC lays down that 5 years ACRs prior to the date of holding of DPC are to be seen and in the case of the applicant these 5 years ACRs were not available when the DPC met in December, 1989. The contention of the learned counsel for the applicant is that the DPC held in 1989 should have considered the ACR of earlier period. Accepting this contention only 3 ACRs of the applicant for the years 1983 to 1985 are written because only in that particular year he has worked for such a period which was seen by the Reporting Officer as has been reported upon. 5 years ACR ~~has to~~ to be seen so the ACRs of subsequent years had to be considered by the DPC. The applicant joined on 10.7.89 and thereafter his ACR for the period 1989-90 was written down so the DPC met in the year 1991 has considered the ACR of 1985-86 & 1990-91 of 1983-84, 1984-85 and 1989-90 and considering these 5 years ACR the applicant was given promotion

w.e.f. January, 1992 on the recommendation of the DPC. The applicant, therefore, should not have any grudge on this account that his case has gone by default. The applicant has only a right to be considered for promotion and he was considered in the year 1989 but because of his own absence from duty or not performing effective duty on the post, his ACR could not be written. The learned counsel points out that when the ACR is not written the ACR of other years would be seen. However, when we calculate the years on finger tips we find that the ACRs are not at all available of any of the years to make 5 years ACR available in the year 1989. The question therefore arise whether the applicant has been discriminated or he has not been given promotion in an arbitrary manner. A person who is discharging the duties regularly and diligently cannot be compared with a person but on account of any reason, whatsoever, is absenting from his job though subsequently the period of absence may be regularised of any kind of leave due or any other manner whatsoever. The applicant also cannot say there is violation of equality in his case. The applicant so far as

LDC post is concerned in all respect is equated to other LDCs but as regards the discharge of duties on the post of LDC he has made out his case separate from the others as said above.

We therefore find that the case of the applicant has not gone by default or on account of any administrative lapse. The Departmental Representative has rightly pointed out that the very hand of friendship extended to the applicant of taking lenient view has been cut short by the applicant while filing this application in the Tribunal. A magnanimity shown to him has been treated as a curse by the applicant by calling the respondents to face proceedings in this O.A. - All these things apart. The basic question remains whether the applicant can be equated with those UDCs who were junior to him and have been promoted in earlier the simple question is negative.

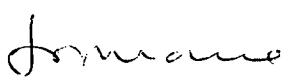
However, we have also considered the fact that the seniority of the applicant has not been downgraded. The period of absence has not reduced his seniority in the cadre of LDC or UDC. For the next higher promotion if he is eligible and found fit all these periods will be considered as period as decided by the respondents treating the period of absence from 10.3.86 to 10.7.89.

RA

We find no merit in this application.

Therefore the same is dismissed leaving the parties
to bear their own cost.


(B.K. SINGH)
MEMBER(A)


(J.P. SHARMA)
MEMBER(J)

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