

16

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI**

O.A. NO.2719/2004

This the 13<sup>th</sup> day of January. 2006

**HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)**

**HON'BLE SHRI SHANKER RAJU, MEMBER (J)**

Smt. Kamlesh Shankdhar  
Steno Grade-III (32061)  
HQ WAC Command, IAF,  
Accounts Section, Subroto Park,  
New Delhi.

... Applicant

( By Shri G.D.Bhandari, Advocates )

versus

1. Union of India through  
Secretary, Ministry of Defence,  
Government of India, North Block,  
New Delhi.
2. The Air Officer I/C Pers.,  
Air Headquarters, Vayu Bhawan,  
New Delhi.

... Respondents

( None present )

**ORDER (ORAL)**

**Hon'ble Shri V.K.Majotra, Vice-Chairman (A):**

Applicant is aggrieved by order dated 2.9.2004 whereby respondents have communicated to applicant, on consideration in pursuance of Tribunal's directions contained in its orders dated 22.1.2004 whereby OA No.68/2003 was disposed of, that applicant has not been assessed with reference to 'good' as a benchmark but subjected to the criteria<sup>on</sup> of 'above average' as applicable to non-selection posts.

2. Applicant had earlier on assailed through OA No.68/2003 promotion orders of her alleged juniors from the post of Stenographers Grade-III to the post of Stenographers Grade-II, a Group 'C' non-selection post ignoring applicant,

16

lb who is senior to them lb and has a lb good record. OA No.68/2003 was disposed of vide orders dated 22.1.2004 with the following observations/directions:

“9. Having regard to the facts and circumstances of the case and having observed that the applicant has been duly considered by the DPC as constituted for the purpose, following the guide-lines on the subject, while we do not find any reason to interfere with the panel as prepared by the respondents vide Annexure A-1, we are not satisfied with the explanation given by the respondents in regard to how they have applied the bench mark ‘Good’ in the case of promotion of Stenographer Grade-III to Stenographer Grade-II and how they have defined “fit” following the bench mark “Good” in spite of the fact that the post of Stenographer Grade-II is a non-selection post. To our mind, this requires re-examination and re-consideration by the respondents in order to ensure that they are not following instructions which are not relevant to the case and that the applicant is not subjected to any injustice whatsoever for that reason.

10. With this, the OA is disposed of in terms of the above observations/directions.”

In the impugned orders respondents have stated as follows:

“3. Accordingly, the matter had been re-examined. Stenographer Grade III is a non-selection post and there is no bench mark provided in such cases. Categorisation as ‘Fit’ or ‘Not Yet Fit’ is to be made on the basis of assessment of their record of service. However, as per DPC Guidelines contained in para 6.14 of DOP&T OM No.22011/5/86-Estt(D) dated 10 Apr 1989, “Average may not be regarded as an adverse remark in respect of an officer, at the same time, it cannot be regarded as complementary to the officer, as “Average” performance is regarded as routine and undistinguished. It is performance that is “Above Average” and performance that is really noteworthy which entitles an officer to promotion”. Since there is no grading as ‘Above Average’, Air HQ have been denoting ‘Good’ as the bench mark in the minutes in the case of all non-selection posts. However, in practice, DPCs have been following ‘Above Average’ which should be midway between ‘Average’ and ‘Good’ whereas in the case of selection, where ‘Good’ is the bench mark, the requirement is that of the aggregate of all the five reports should be good or above.

4. You have not been assessed with reference to ‘Good’ as a bench mark but subjected to the criteria of ‘above average’ as applicable to non-selection posts in terms of DOP&T OM No.22011/5/86-Estt(D) dated 10 Apr 1989 and you have not been subjected to any injustice.

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5. In view of the above, you are informed that the direction of the Hon'ble Tribunal has been complied with."

3. The learned counsel of applicant stated that the post of Stenographer Grade-II (Hindi) is a non-selection post for promotion to which no benchmark is prescribed. However, respondents have been taking into consideration 'good' gradings only for purposes of promotion. The learned counsel maintained that although applicant had received superior gradings than 'average' in certain years, she has been bypassed in promotion. The learned counsel has relied on Annexure A-8 dated 2<sup>8</sup> 11.2002 which are instructions in respect of 'average' grading in the ACRs, on a clarification from the DOP&T. These instructions read as follows:

"Observations in the DPC guidelines in regard to 'Average' being uncomplimentary and not worthy of suitable regard of promotion is only in the context of promotion where posts are to be filled by 'Selection' i.e. where performance (merit) is an essential aspect of judging suitability. However, in cases of promotion by non-selection where seniority and not performance is the predominant criteria, 'Average' may not be viewed as unsuitable for promotion solely on this consideration unless there are other grounds to treat the employee unfit. If 'Average' is not considered as fit even for non-selection, distinction between Selection (upto the grade of Rs.10000-15200) where bench mark is 'Good', and Non-Selection vanishes."

On the basis of the clarification issued by DOP&T, respondents have stated, "employees with 'Average' ACR are fit for promotion and also for financial upgradation under ACP where the Recruitment Rules for the post, to which promotion/upgradation is made prescribe promotion on Non-Selection basis."

4. The learned counsel further relied on (1997-2001) ATFBJ 411 *I. Raju v Chairman & Managing Director, BSNL, New Delhi & Ors.*, in which the issue of non-communication of adverse remarks recorded by the DPC for the relevant period in matters of promotion post on seniority-cum-fitness basis, was decided. The reference was answered as follows:

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“13. Accordingly, the question is answered thus:

When promotion is based on seniority-cum-fitness, the incumbent is entitled to be reconsidered for promotion when adverse entries in the ACRs have not been communicated to him for the relevant period ignoring the finding of the DPC that the incumbent is “Not yet fit” on the basis of ACRs.”

5. On the other hand, respondents have stated that they have taken into consideration the observations/directions of the Tribunal contained in order dated 22.1.2004 in OA No.68/2003. Applicant's case was re-examined. She was not assessed with reference to “good” as a benchmark but subjected to the criterion of “above average” as applicable to non-selection posts. Respondents maintain that applicant was not subjected to any injustice and DOP&T instructions dated 10.4.1989 were taken into consideration.

6. We have considered the respective contentions of parties. Government instructions regarding Departmental Promotion Committees (DPCs) in respect of non-selection method for promotions are contained in paragraph 7 of Chapter 54 “Promotions” in Swamy's Complete Manual on Establishment and Administration, which read as follows:

**“Non-Selection Method**

7. Where the promotions are to be made on ‘non-selection’ basis according to Recruitment Rules, the DPC need not make a comparative assessment of the records of officers and it should categorize the officers as ‘fit’ or ‘not yet fit’ for promotion on the basis of assessment of their record of service. While considering an officer ‘fit’, guidelines in Para 6.1.4 should be borne in mind. The officers categorized as ‘fit’ should be placed in the panel in the order of their seniority in the grade from which promotions are to be made.”

Guideline 6.1.4 of guidelines for DPCs incorporated in the same Chapter reads as

follows:



20

“6.1.4 Government also desires to clear the misconception about “Average” performance. While “Average” may not be taken as adverse remark in respect of an officer, at the same time, it cannot be regarded as complementary to the officer, as “Average” performance should be regarded as routine and undistinguished. It is only performance that is above average and performance that is really noteworthy which should entitle an officer to recognition and suitable rewards in the matter of promotion.”

7. On perusal of the ACR dossier of applicant, the Tribunal had observed in its orders dated 22.1.2004 in OA No.68/2003 as follows:

“.... On perusal of the CR Dossier of the applicant produced by the respondents before the Tribunal, it is observed that the applicant has been awarded gradings of ‘average’ for three years and ‘good’ for two years out of the five years in question, namely, 1996-97 to 2000-2001 for the DPC held during 2001-2002, and gradings of two ‘average’, two ‘good’ and one ‘outstanding’ for the DPC held during 2002-2003....”

8. Taking into consideration the DPC guidelines contained in paragraph 6.1.4 *ibid*, respondents have themselves recorded in their Annexure A-8 dated 28.11.2002 that the employees with ‘average’ ACR are fit for promotion and also for financial upgradation under the ACP Scheme where the recruitment rules for the post, to which promotion/upgradation is made prescribes promotion on non-selection basis.

9. The collective impact of the ruling in the case of *I.Raju* (supra) in combination with respondents’ Annexure A-8 and Tribunal’s observations relating to applicant’s ACR dossier as quoted above, is that applicant is ‘fit’ for promotion to the post of Stenographer Grade-II (Rs.5000-8000), which is admittedly a non-selection post for which no benchmark is prescribed.

10. In result, Annexure-B dated 2.9.2004 is quashed and set aside. Respondents are directed to re-consider applicant’s case for promotion in the light of the above observations and accord promotion to applicant as Stenographer

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of

Grade-II (Rs.5000-8000) from the date applicant's juniors were so promoted. Applicant shall be entitled to all consequential benefits of such promotion. The above exercise should be carried out expeditiously and preferably within a period of three months from the date of communication of these orders.

11. The OA is allowed in the above terms, with no orders as to costs.

S Raju

(Shanker Raju)  
Member (J)

/as/

V. K. Majotra

(V. K. Majotra)  
Vice-Chairman (A)

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