

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2809 of 2004

New Delhi, this the 1st day of May, 2006

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mrs. Chitra Chopra, Member (A)

Ajay Pratap singh,
S/o Sh. Udai Pratap singh,
R/o RZD 1/ 4, Vijay Enclave,
Dabri Palam Road,
New Delhi.

.... Applicant

(By Advocate: Shri U.Srivastava)

VERSUS

Union of India through

1. The Secretary,
Ministry of Defence,
South Block, New Delhi.
2. The Director General of Ordnance Services,
Master General of Ordnance Branch,
Army Headquarters, DHQ,
P.O. New Delhi-11.
3. The Commandant,
Central Vehicle Depot,
Delhi Cantt.-10.

..... Respondents

(By Advocate: Shri H.K.Gangwani)

O R D E R

Hon'ble Mrs.Chitra Chopra, Member (A)

By this OA, the applicant Ajay Pratap Singh seeks quashing of impugned order dated 14/17.7. 2003 (Annexure A 1) by which his appeal dated 22.6.2002 for setting aside the remarks in ACR for 1999 onwards was rejected. By way of relief he has also sought restoration of his seniority in terms of expunction of adverse remarks and convening a DPC for the year 2000-2001 with all consequential benefits.

Chitra Chopra

2. Briefly the factual position as submitted by the learned counsel for applicant is, as under:

A Departmental Promotion Committee (DPC) was convened for promotion of 7 posts of Senior Civilian Staff Officer (SCSO) (Stores) in November, 2000, ignoring the case of applicant whereas he was eligible for the said promotion and was within the zone of consideration. However, applicant's name was not included in the DPC and he was superseded by his three juniors. The applicant submitted a representation to the respondent in the shape of an appeal for setting aside of remarks /grading in his ACR by the reviewing officer. His appeal was accepted and the remarks of the reviewing officer for the year 1997-1998 were set aside but for the remaining period the representation was not accepted as no irregularities had been observed in the ACRs of 1999 onwards. This was conveyed to the applicant vide order dated 11.1.2002 (Annexure A-2).

3. The grievance of applicant is that instead of reviewing the seniority as well as convening the review DPC for the year 2000-2001 in terms of order dated 11.1.2002, although the respondents have promoted the applicant as SCSO vide order dated 14.10.2004 but neither the seniority of the applicant has been reviewed, nor they have convened the review DPC in accordance with the relevant rules and instructions. He has, therefore, through this OA, sought convening of the DPC and restoration of his seniority.

4. By way of counter, the learned counsel for the respondents has made the following submissions:

The ACR for the year 1997-1998 as on 31.3.1998 in respect of the applicant was reviewed by Brig. A. K. Jyoti. As per the instructions, the Reviewing Officer should have acquainted with the work of the officer at least for three months (90 days) during the period covered by the report. As the

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applicant had rendered 83 days under Brig. A.K. Jyoti, the then Commandant(RO), thus short by 7 days for mandatory period of 90 days, the ACR was found reviewed by Brig. Jyoti erroneously. On this basis, the remark of reviewing officer in the ACR for the year 1998 was set aside. This has been clearly stated in the order of dated 11.1.2002 which reads as follows:

“Appeal dated 17 Jul 2001 from CSO Shri AP Singh has been examined in consultation with Ministry of Defence. Para 7 (a) of ibid appeal has been accepted as the officer has not completed 90 days of mandatory service under RO. Remarks of RO in the ACR for the period 97-98 are therefore set aside. However Para 7 (b) of ibid appeal is not accepted as no irregularities have been observed in ACRs of 1999 onwards”.

5. The applicant has also sought setting aside of the remarks in the ACR for the year 1999. However, as that ACR did not suffer from any infirmity or illegality, his appeal against the same was rejected. It has also been stated that there are no weak point in the ACRs 1999 onwards which was reviewed by the same reviewing officer.

6. The applicant was considered for promotion by the DPC convened by UPSC on 30.11.2000 but he was not empanelled by DPC for the grade of SCSO.

7. In the subsequent DPC held on 25.8.2004, the applicant was considered and empanelled for promotion and as such he was promoted vide order dated 14.10.2004. As the DPC of 2004 which was held in the month of August, 2004 would have considered 5 years' ACR starting from 1999-2000 onwards, the ACR for the year 1997-1998 would not have been taken into account by the DPC. Hence, it was not necessary to convene a review DPC consequent upon setting aside the remarks of reviewing officer in the ACR for the year 1997-1998. On this count, no case is made out in favour of the applicant. In this regard, reliance has been placed on the

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decision of the Hon'ble Supreme Court in the case of Union of India and Anr. Vs. Major Bahadur Singh (2005(9) Scale 459. However, in this case, the issue was some what different as it related to communication of adverse remarks. It has been observed by the Hon'ble Supreme Court in Major Bahadur Singh's case (supra) as follows:

“ The High Court by the impugned judgment held that though the Court cannot moderate the appraisal and grading given to an officer while exercising the power of judicial review yet the Annual Confidential Report (in short the “ACR”) for the year 1989-90 has an element of adverse reflection leading to denial of promotion and, therefore, the same ought to have been communicated to the writ petitioner-respondent which has not been done”.

8. With due respect, the aforesaid ruling of the Hon'ble Supreme Court would not support the case of the applicant as there has been no adverse remarks in the five years ACRs from 1999 to 2003-2004 which were considered for his promotion.

9. We have heard the rival contentions of both the learned counsel for the parties and have perused the material placed on record.

10. From the perusal of record there appears to be no infirmity in the procedure or otherwise in so far as ACRs of the applicant is concerned as also in consideration by the DPC. The respondents have duly considered the representation of the applicant and set aside the in valid part of his ACR for the year 1997-1998. No injustice or arbitrariness appears to have been caused to him.

11. In view of above discussions, we find no merit in this OA. The same is accordingly dismissed. No costs.

Chitra Chopra
(Mrs. Chitra Chopra)
Member (A)

S. Raju
(Shanker Raju)
Member (J)