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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./XXX. No. 3169/92 /19 Decided on: 10.12.1996.

..... APPLICANT(S)
Shri S.K. Sharma
(By Shri Shyam Marjani Advocate)

VERSUS

..... RESPONDENTS
UOI & others
(By Shri Madhav Panikar Advocate)

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THE HON'BLE SHRI S.R. ADIGE, MEMBER(A).

THE HON'BLE SHRI DR. A. VEDAVALLI MEMBER(J)

1. To be referred to the Reporter or not? Yes.

2. Whether to be circulated to other Benches of the Tribunal? No.

Adig
(S.R. ADIGE)
MEMBER(A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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O.A. No.3169/92

New Delhi This the 10th day of December, 1996.

HON'BLE SHRI S.R. ADIGE, MEMBER(A)

HON'BLE DR. A. VEDAVALLI, MEMBER(J).

Shri S.K. Sharma,
S/o Late Shri R.K. Sharma,
Divisional Organiser,
Directorate General of Security,
Office of the Divisional Organiser,
SSB, North Assam Division,
TEZPUR.

..... Applicant.

(By Advocate Shri Shyam Moorjani)

Versus

1. Union of India,
through the Cabinet Secretary.
Cabinet Secretariat,
Govt. of India, Bikaner House,
Shahjahan Road,
New Delhi.

2. The Cabinet Secretariat,
through the Cabinet Secretary,
Government of India,
President House,
New Delhi.

3. Directorate General of Security,
through the Director,
Office of the Director, SSB,
Block V, East R.K. Puram,
New Delhi-110066.

4. Shri H.B. Johri,
Ex-Principal Director,
Directorate General of Security,
resident of B-6/109,
Safdarjung Enclave,
New Delhi.

..... Respondents.

(By Advocate Shri Madhav Panikar.)

JUDGMENT

By Hon'ble Shri S.R. Adige, Member(A).

In this application Shri S.K. Sharma is
seeking quashing of those promotion orders issued

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by the respondents which do not accord with his promotion as IG/Divisional Organiser/Joint Director w.e.f. 1989. He is seeking promotion as such w.e.f. 1983, since when he was discharging the duties of Divisional Organiser, or alternatively to grant him promotion atleast w.e.f. 1989, when he became eligible for promotion with consequential benefits.

2. The applicant avers that he joined the Indian Army in 1963 and in July, 1967 was deputed to SSB under Directorate of General Security, where he was absorbed in September, 1967. In July, 1973 he was promoted to the rank of Dy. Commandant, and was thereafter promoted to the rank of Commandant/ Area Organiser in October, 1975 and held charges of various Battalions/ Areas upto June, 1983. In June, 1983 he was posted at Manipur as officiating Divisional Organiser. In December, 1983 he was promoted as DIG and posted as DIG Frontier Academy Gwadham (UP) but was not relieved to join there and was ordered to continue at Manipur where he had been working since June, 1983 in capacity of officiating Area Organiser of Manipur/ Haflong Division. Again in December, 1984 he was posted as DIG, Training Centre Haflong, but was ordered to function at Manipur, holding two additional charges as Divisional Organiser, Manipur and Div. Organiser Haflong. In March, 1987 he was transferred

to Jodhpur as DIG Rajasthan and Gujarat Division which was a new unit and in May/June '88 upon the sanctioning of a post of Divisional Organiser at Jodhpur, he held charges of the same till Nov '90. He states that he is a direct group Centre Hardcore Cadre Officer of SSB and is the only such officer to reach upto the stage of IG/Joint Director/Divisional Organiser.

3. He contends that as per Senior Executive

Rules which govern the SSB, eligibility for promotion

from DIG to IG is 6 years service as DIG and having

been promoted as DIG in Dec '89 he completed the

requisite 6 years service on 29.12.89. He states

that he represented on 19.12.89 for consideration

for promotion and was eventually informed on

5.2.90 (Annexure A-2) that vide DP&T OM dated 19.7.89 that

the crucial date for determining eligibility of

officers for promotion was 1st October, and his case

would be considered only in Oct '90 after the ACR's

for 1989-90 were completed. Thereupon by letter

dated 9.3.90 he informed them that for the year 1990

as well as 2 years thereafter, no other person except he

himself would be eligible and he requested that the

DPC be not delayed, but the respondents in their

letter dated 28.3.90 (Annexure A-4) adhered to their

stand. Thereupon by his letter dated 12.4.90 (Annexure-A5) the applicant asked the respondents to obtain a clarification from DP & T, but he says that they paid no heed to this request and continued getting deputationists for being posted as Divisional Organisers to his prejudice. On 4.5.90 he lodged a protest and by another letter dated 10.5.90 sought personal interview with the Director, SSB (Respondent No.4) but alleges that the latter seemed determined to induct deputationists and thus mar the applicant's own career, and did not grant him the interview, upon which he submitted another representation on 13.8.1990 asserting that as he had become eligible for consideration for promotion in December, 1989, he was entitled to be considered against 1989 vacancies, and ACR's for 1989-90 could not be taken into consideration. Not hearing further in the matter he again represented on 10.10.90 followed by another representation dated 19/20.11.90, and one more on 10/12.12.90, in which he also voiced his apprehensions that his ACRs for the year 1989-90 were deliberately not initiated in time by Director SSB (Reporting Officer) so that the Reviewing and accepting officer who were to retire on 30.4.90 and 31.7.90 were precluded from recording their independent assessment, and once initiated, his grading had been malafidely depressed to mar his promotional chances. He avers that he received no reply to

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those representations and his prayer for a personal interview with the Cabinet Secretary was also not granted.

4. Meanwhile pursuant to his representation

dated 10.10.90 a DPC was convened in Dec'90 which

recommended the applicant's case for promotion as

Divisional Organiser/I.G./Joint Director and the

case was sent to the ACC, where his case for promotion

was cleared by the Hon'ble Home Minister and Hon'ble

Deputy Prime Minister, but he alleges that some

officers approached the Hon'ble Prime Minister and got placed

some false materials and made representations therein

that neither formed part of ACR dossier nor the

applicant's file, and the remarks of the Reviewing

Officer were also not considered as a result of

which the DPC's recommendations were not accepted.

He avers that he represented on 12.12.90, followed

by reminder on 30.5.91, and, another representation

on 25.6.91 and it is only in July'91 that he received

respondents letter dated 21.6.91 informing him that

the ACC had not approved his promotion. He asserts

that never before had the recommendations of the DPC

headed by Cabinet Secretary as Chairman not been

approved by the ACC but in his case, owing

to malafides of respondents he was made to suffer.

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5. He avers that thereupon he submitted a representation dated 31.7.91 addressed to the Hon'ble Prime Minister giving the entire details of his case, but apprehends that the same was never placed before him and meanwhile he received a letter dated 22.8.91 informing him that the decision taken by the Minister I/c on the DIC's recommendations were final, and meanwhile he received another letter dated 22.8.91 informing him that his promotion would be considered in the current year. Eventually the DIC was held and vide orders dated 2.12.91 he was promoted to the post of Divisional Organiser, but the applicant's main grievance is that he should have been so promoted on the basis of the DIC's recommendation of December, 1990 itself.

6. The respondents in their reply have challenged the OA, They states that the applicant took charge on promotion as Dy. Director/DIG on 29.12.83 (Annexure-R4) and under Rule was eligible for consideration for promotion as Divisional Organiser/IG on completion of 6 years service in the grade of Dy. Director/DIG which he duly completed on 28.12.89. As per DP & T's OM dated 19.7.89 read with their OM dated 6.4.90 (Annexure-R2 and R3), the crucial date to determine the eligibility for consideration for promotion as prescribed by the relevant recruitment rules being 1st October (where the ACRs are written financial yearwise), he was rightly not considered in December, 1989 as he was not eligible for consideration

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on 1.10.89 against vacancies of 1989.

7. In so far as the applicant's claim for promotion as Divisional Organiser from 1983 itself on the ground that he was holding the post of Divisional Organiser is concerned, respondents aver that it is patently misconceived as he did not have the requisite 6 years service in the feeder grade, and in any case he was holding only current charge of the duties of the Divisional Organiser in addition to his own duties as Area Organiser/DIG and was not entitled to or eligible to claim promotion or even ask for extra remuneration for the period he held current charge of the post, vide Cabinet Sectt. Order dated 14.7.83 (Annexure-R6) and 29.12.83 (Annexure-R7) respectively.

8. In so far as the DPC's recommendations of December, 1990 are concerned, the respondents submit that the DPC was convened on 27.12.90 to consider the applicant's case for promotion but at that stage the competent authority after a careful consideration did not consider him fit for promotion. The respondents deny the applicant's allegation that unscrupulous senior officials acting in a malafide manner placed false materials and representations before the Hon'ble Prime Minister, on the basis of which his case for promotion was rejected.

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9. Admittedly, the applicant's case for promotion was considered again in the next year, and on the basis of DRC's recommendations held in September, 1991, and the subsequent approval of the competent authority, the applicant was promoted to the grade of Divisional Organiser/Joint Director/IG and took over charge w.e.f. 24.12.91 (Annexure-R31).

10. The applicant in his rejoinder has reiterated the contents of the OA and repelled the averments made by the respondents.

11. We have heard applicant's counsel Shri Moorjani and respondents' Shri Madhav Panikar. We have also perused the materials on record including the original file containing the recommendations of the DPC and the notings relating to the examination of the applicant's case for promotion, and have given the matter our very careful consideration.

12. In so far as applicant's claim for promotion as IG/Divisional Organiser/Joint Director w.e.f. 1983 i.e. from the time he was asked to hold current charge of the post of Divisional Organiser, Manipur is concerned, the same is fit to be dismissed summarily because the applicant at that time did not possess the mandatory 6 years service in the grade of DIG to be considered for promotion to the post of IG/Divisional Organiser/Joint Director.

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13. As regards consideration of the applicant's case for promotion from 1989, the same is also not permissible as the applicant had not completed the eligibility period of 6 years in the grade of DIG on 1.10.89, which was the crucial date for the 1989 vacancies in terms of DPM's OM dated 6.4.90 enclosed with a copy of Cabinet Secretary's O.M. dated 14.5.90 (Annexure-R10). The applicant has contended that certain exceptions were made in other cases, and the same could have been done in his case also. Even assuming (but without recording any finding on that point) that the applicant's contention is correct that certain exceptions were made in cases of others, that does not give the applicant a legally enforceable right to claim that a similar exception be made in his case. In this connection the Hon'ble Supreme Court's ruling in Chandigarh Admin. & another Vs. Jagjit Singh ^{1 JT/995(1) 5C45} is relevant:

"Generally speaking the mere fact that the respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person may be legal and valid or it may not be. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of the case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent authority to repeat the illegality or to pass another unwarranted order By refusing to direct the respondent authority to repeat the illegality, the Court is not condoning the earlier illegal act, nor can such illegal order constitute the basis for legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interest of law and and will do incalculable harm to the

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public interest. It will be negative of law and the rule of law."

14. Under the circumstance, the applicant is not eligible to be considered for promotion from 1989.

15. Coming to 1990, we find that the applicant was considered for promotion, but was eventually not selected. In this connection, we have perused the contents of PM's Office File No.905/5/U/64/91/Pt. in which the proposal regarding the applicant's promotion was examined, together with the applicant's ACRs. It is true that the DEC consisting of the Cabinet Secretary, the Director General(S) and the Principal Director found him fit for promotion, but when the matter went to the PM's Office, it was noted that he had been graded as just 'Average' for the preceding year 1989-90 and that the Director General(Security) displeasure had been communicated to him for lack of observance of departmental regulations and financial powers. It was noted that his performance was Average, and with guidance and control he was likely to do better. Even qualities like dependability, ability to plan operations had been graded as merely 'Good' while his moral character and loyalty had been graded as only Average. His CR for the previous year 1988-89 also showed him to be no more than Good and for the year 1987-88 he did not get a

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single 'B' assessment showing that he was only "Good" or "Average" against most of the assessment columns, and there was no compelling need to promote him with his record. A contrary view was also expressed that as this appeared to a border line case, and the promotion had been recommended by the DPG, and the applicant was the only eligible Officer for promotion, and other very senior officers had also come out strongly in support of the promotion, the same could be approved but eventually the Hon'ble Prime Minister recorded his minute on 11.3.91 that there was no justification to promote the applicant in view of his record and there were no compelling reasons to accept the proposal.

16. Applicant's counsel has forcefully pleaded that when his client's case was found to be on the border line in the departmental noting even with the communication of the displeasure of the Director General (Security) regarding lack of observance of departmental regulations and misuse of financial powers, the same can no longer be said to be a border line case upon the expunction of those remarks by orders dated 20.10.94, and now stood in favour of the applicant, and this was therefore a fit case for issuance of a direction to the respondents to reconsider the applicant's case for promotion from 1990.

17. We have considered this submission carefully

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but find ourselves unable to agree with the same. It is true that the DPC recommended the applicant's case for promotion. It is also clear that when the file reached the P.M's Office, a view was expressed that the applicant's previous record of service did not justify his promotion, upon which a contrary view was also expressed that this being a border line case, the proposal may be approved. The Hon'ble Prime Minister's minute dated 11.3.91 recorded in his own hand shows that he rejected the proposal for promotion after due application of mind that there was no justification to promote the applicant in view of his previous record and there was no compelling reason to accept the proposal. Upon going through the applicant's ACRs for each of the years for the relevant period, we find that under various columns of those ACRs on a 5 point ~~against~~¹ grading of Outstanding (A), Very Good (B), Good (C), Average (D), Below Average (E), the applicant has generally got gradings of only 'B' or 'C'. Similarly his overall grading is "Very Good" for the years 1984-85 and 1985-86; "Average" for the years 1986-87 and 1987-88; "Very Good" for the year 1988-89 and "Average" for the year 1989-90. Under the circumstance, even if the adverse remarks as stated above are deleted, it is difficult to disagree with the view taken by the Hon'ble Prime Minister that in the absence of

any compelling reason to accept the proposal for applicant's promotion, there was no justification to promote him on the basis of that record, more particularly as in the year preceding the year of promotion i.e. 1989-90, he had earned an overall grading of only "Average". The applicant alleged that his ACRs for 1989-90 were deliberately and malafidely depressed, but even if we disregard that particular ACR, a perusal of other ACRs for the relevant period, including the gradings under individual columns for each of the years as well as the overall gradings leaves us with an impression that the applicant's performance ranged between "Good" and "Very Good" but was not "Outstanding". In this connection, respondents' counsel Shri Madhav Panikar has stated that as on promotion, the incumbent was to head the entire Organisation for which an officer with a proven record of consistently high performance was required, it was not unreasonable for the respondents not to have promoted the applicant in December, 1990. It is difficult to disagree with this proposition. We note that after watching the applicant's performance for the year 1990-91 also, in which he secured a Very Good grading, which considerably improved his earlier overall grading, he was eventually promoted in December, 1991. We must also mention here that the advice of the DPC was purely recommendatory in character, and the ultimate approving authority was under no legal compulsion to accept that recommendation or indeed the view

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that it was a border line case. If after due application of mind by the ultimate approving authority, the view was recorded that in the absence of any compelling reason to accept the proposal for promotion, there was no justification to promote the applicant on the basis of that record, and there is no doubt that there was application of mind, we cannot say on the basis of the materials before us that such a view was illegal, arbitrary, perverse or malafide or indeed violative of Articles 14 and 16 of the Constitution so as to warrant our judicial interference. It also needs to be mentioned that the DPC was not conducted under the aegis of UPSC requiring a reference back to them explaining the reasons for disagreement.

18. During course of hearing, applicant's counsel Shri Moorjani has strongly asserted that the applicant should be sanctioned additional emoluments for the period he had discharged the duties and responsibilities of the two posts. As per the materials on record, there is no doubt that the applicant shouldered the duties and responsibilities of an additional post in addition to his own duties and responsibilities for considerable lengths of time. Respondents contend that as the applicant was only in current charge of the additional post he is not entitled to any addl. emoluments. At the very outset we note that under Rule 10 CAT (Procedure) rules an application is required

to be based upon a single cause of action and reliefs sought are required to be consequential to one another. In the present case, it cannot be said that the prayer for additional emoluments for holding charge of a post in addition to ones own is consequential to the prayer for promotion. It is perhaps for this reason that paragraph 8 of the original application containing the reliefs sought by the applicant does not contain any prayer for additional emoluments for holding charge of a post in addition to ones own. As this claim for addl.emoluments pressed by Shri Moonjani during hearing has not been specifically prayed for in the relief paragraph of the OA, we do not consider it necessary to record any finding on the same, leaving it open to the applicant to seek appropriate remedies in accordance with law, if so advised.

19. Subject to the contents of paragraph 18 above, this OA is dismissed. No costs.

A Vedavalli
(DR. A. VEDAVALI)
MEMBER (J)

S. R. Adige
(S. R. ADIGE)
MEMBER (A).

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