

Central Administrative Tribunal  
Principal Bench

O.A.No.870/92  
M.A.No.1207/97

(A)

Hon'ble Smt. Lakshmi Swaminathan, Member(J)  
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 21st day of August, 1997

Narain Prakash  
s/o Shri Shiv Nath Chopra  
r/o L-561 Shastri Nagar  
Meerut.  
O/o the Joint Controller of Defence Accounts(Funds)  
Meerut Cantt. ... Applicant  
(By Shri N.S.Verma, Advocate)

Vs.

1. The Union of India through the  
Secretary  
Govt. of India  
Ministry of Defence (Finance Division)  
New Delhi.
2. The Controller General of Defence Accounts  
West Block - V, Ram Krishna Puram  
New Delhi.
3. The Joint Controller of Defence Accounts(Funds)  
Meerut Cantt. ... Respondents  
(By Shri Harvir Singh, proxy of Ms. P.K.Gupta, Advocate)

O R D E R (Oral)

Hon'ble Shri R.K.Ahooja, Member(A)

The applicant is aggrieved that he has not been considered for promotion along with his junior, one Shri Narain Swarup who was last promoted on 18.9.1979 to the grade of Selection Grade Auditor (SGA) superceding the applicant, though the applicant was senior to him.

2. The facts of the case in brief are that the applicant was appointed as a temporary UDC with effect from 18.4.1963 while Shri Narain Swarup was appointed on 20.4.1963. However, Shri Narain Swarup was confirmed as Upper Division Clerk, now Auditor, w.e.f. 1.4.1969 but the applicant was confirmed only w.e.f. 1.12.1972. This led to the discrepancy in the dates of promotion, as Shri Narain Swarup stole a march over the applicant because of earlier confirmation. The applicant has now come to this Tribunal on the Judgment of the Hon'ble Supreme Court in

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Direct Recruit Class-II Engineers Officers Association & Others

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Vs. State of Maharashtra & Others seeking the relief that the respondents be directed to consider the applicant for promotion to Selection Grade Auditor (now Sr. Auditor) prior to 18.9.1979, i.e., the date on which the Shri Narain Swarup, the applicant's junior, was promoted, after giving him appropriate seniority as Auditor, and to give him the consequential benefits.

3. The respondents in their reply raise a preliminary objection of limitation. They also state that the applicant was confirmed after his junior Shri Narain Swarup due to adverse ACRs which was intimated vide letter No. AN/B/108/CF/91 dated 19.3.1991 of CDA (ORS). They have annexed summary of the ACR gradings earned by the applicant at Annexure-XVI of the reply and also copies of the acknowledgements of the receipt of adverse entries by the applicant at Annexure-XVII (collectively) for the period from 31.12.1968 to the end of December, 1969.

4. We have heard the counsel on both sides. We notice that the applicant was informed vide letter dated 22.3.1991 (Annexure 15) that his request for antedating of his confirmation in Auditor's grade w.e.f. 01.03.1969 instead of 1.12.1972 had been considered but not acceded to due to the adverse ACRs. Since it conveyed the decision of the respondents, there is no delay in filing the OA, which was submitted to the Tribunal on 17.3.1992.

5. On merits we find that the applicant has a case. The summary of the ACR gradings, Annexure-XVI shows that till 20.3.1969 he did not have any adverse entry. This is stated by the respondents themselves in the aforesaid Annexure-XVI. The adverse entries have been given for the period 20.3.1969 to 19.9.1969 and till the end of December, 1969. The applicant is claiming his confirmation w.e.f. 1.3.1969 to which these adverse

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entries do not pertain. We also find that the reply to Annexure 15 does not indicate whether the case of the applicant was placed before the appropriate Departmental Promotion Committee or whether the decision to reject the representation of the applicant was taken by the CDA himself, since the applicant had claimed that he be promoted on the basis of confirmation given to his junior. This point is not controverted by the respondents since they concede that the applicant was senior of the two and their cases for consideration for confirmation were placed before the DPC as per the then existing Rules. The learned proxy counsel for the respondents has stated that the case was in fact placed before the DPC, though due to some typographical mistake it has come out in the reply that it was considered in 1986 when the correct version should have been 1968. We are unable to rely on this statement because there was no question of DPC considering the confirmation of the applicant in 1968.

6. In the facts and circumstances of the case, the applicant is entitled to succeed and the OA is disposed of with a direction that the respondents will place the matter before the concerned DPC within three months from today for consideration of the case of the applicant for confirmation from the date his junior Shri Narain Swarup was confirmed, i.e. 01.03.1969. The DPC will take into consideration the relevant ACRs upto the period 1.3.1969. The respondents will also consider him for further promotions in accordance with the decision of the DPC regarding his date of confirmation and pay him the consequential benefits. This exercise should be completed within three months thereafter.

OA is disposed of as above. No costs.

In the light of the above, the MA becomes infructuous and is disposed of accordingly.

*R.K.Ahooja*  
(R.K.AHOOJA)  
MEMBER(A)  
/rao/

*Lakshmi Swaminathan*  
(SMT. LAKSHMI SWAMINATHAN)  
MEMBER(J)