

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1158 OF 1997
ALLAHABAD THIS THE 5TH DAY OF AUGUST, 2003

HON'BLE MAJ GEN.K.K. SRIVASTAVA, MEMBER-A
HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

V.K. Gautam,
son of Late Om Prakash Gautam,
R/o P41/8 Type III Raksha Vihar,
Shyam Nagar,
Kanpur-208013.Applicant

(By Advocate Shri K.P. Bajpai)

Versus

1. The Union of India,
through Secretary
Defence Production and Supplies,
South Block,
New Delhi.
2. The Director General Quality Assurance,
Department of Defence Production,
DHQ P.O. New Delhi-110011.
3. The Director Quality Assurance (Armaments)
Department of Defence Production (DGQA)
DHQ Post -New Delhi-110011.
4. Senior Quality Assurance Officer,
Senior Quality Assurance Estt(Arms)
Armepore Post Kanpur-208009

.....Respondents

(By Advocate Shri S. Mohiley)

O R D E R

HON'BLE MRS MEERA CHHIBBER, MEMBER-J

By this O.A. the applicant has sought the following
reliefs:-

"i) to quash the impugned order dated 1.10.1996
passed by DQA(Armament) and order dated 26.2.1997
D.G.Q.A. (i.e. Annexure no.1 and 2 to the compilation
no.1).

ii) to restrain the respondents authority from
interfering with the increments as admissible to the
petitioner in pursuance of the impugned orders.



- * iii) Any other order or direction which the Tribunal may deem fit and proper in the circumstances of the present case.

2. Grievance of the applicant in this case is that vide order dated 01.10.1996 applicant was imposed the penalty of withholding of two increments with cumulative effect. (Page 16). The said order was passed by Maj Gen. A.K. Agrawal in the Directorate General of Quality Assurance Department. Being aggrieved he filed his appeal to the next higher authority i.e. DGQA but by then he took over as DGQA and rejected the appeal himself vide order dated 25.02.1997 (page 18).

3. Grievance of the applicant is that the same officer could not have decided his appeal as that would amount to denial of right to file his appeal as his mind was already prejudiced having passed the penalty order. During the pendency of the O.A applicant filed M.A. No.5565/00 with a prayer to direct the respondents to consider his case and grant him the benefits of ACP (Assured Career Progression) Scheme within some stipulated period. Today when the case was called out counsel for the applicant submitted that applicant has already been given the benefit of ACP Scheme, therefore, he is not pressing the said M.A any longer.

4. Coming to the main relief sought by the applicant we have heard applicant's counsel as well as the respondent's counsel and perused the pleadings as well.


5. It is seen that the penalty order was passed by Shri A.K. Agrawal in his capacity as Maj Gen. DQA. But when the applicant filed his appeal he was promoted as Lt. Gen. and had taken over as DGQA, therefore, he has decided the appeal also rejecting the same. The idea of giving an opportunity to file appeal is, so that the grievances made


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out by the person concerned can be looked into by the next higher authority and in case he finds any illegality in the order, the same may be rectified. It goes without saying that a person who has passed the penalty order himself would definitely be prejudiced as he would not like to find ~~out~~ any illegalities in his own order. Therefore, we would agree with the applicant's counsel that the same person on being promoted should not have decided the appeal and if need be, the appeal should have been referred to some other officer of the same rank for being decided. Since appeal has been decided by the same officer who had imposed the penalty, the appellate order cannot be sustained in law, the same is accordingly quashed and set aside. We want to make it clear that we have not gone into the merits of the case and are remitting the matter back to the Appellate Authority with clear direction that in case the same officer is continuing to be DGQA, the appeal should be referred to ^{some} ~~the~~ other officer of the same rank so that it may be decided by ^{an} ~~the~~ independent person/authority within a period of three months from the date of receipt of a copy of this order. The order shall be intimated to the applicant and of course the order should be detailed and speaking order so that in case applicant is still aggrieved, he may challenge the same by filing a fresh O.A.

6. With the above directions the O.A. is partly allowed with no order as to costs.


Member-J


Member-A

/Neelam/