

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 29th day of November 2000.

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

Hon'ble Mr. S. Dayal, A.M.

Original Application no. 808 of 1997.

Y.K. Verma,

S/o Late Anirudh Lal,

R/o 31, Mini, MIG,

Govindpur Allahabad.

Presently posted as Accounts Officer,

in the office of the Chief Controller

of Defence Accounts(Pension) Allahabad.

... Applicant

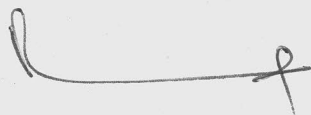
C/A Shri H.S. Srivastava

Versus

1. Union of India through Secretary  
Ministry of Defence (Finance), New Delhi.
2. The Financial Advisor,  
(Defence Services),  
Ministry of Defence(Finance), New Delhi.
3. The Controller General of Defence Accounts,  
West Block - V, R.K. Puram, New Delhi.
4. The Chief Controller of Defence Accounts,  
(pensions), Draupadighat, Allahabad.

... Respondents

C/Rs Shri D.S. Shukla



O R D E R (Oral)

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

The claim of the applicant in this OA under section 19 of the A.T. Act, 1985, is that the respondents be directed to consider the case of the applicant for promotion to the grade of Senior Accounts Officer from 01.10.96, on which persons junior to him were promoted.

2. On recommendation of IV Pay Commission, it appears that the Govt. ~~enforced~~ re-structuring of the cadre amongst Audit and Accounts Officers and the post of Senior Accounts Officer w.e.f. 01.04.92 was created by order dated 22.09.92 (annexure 4 to the OA). Under this order, Accounts Officers were to be given higher grade on the basis of criteria laid down in the order. The criteria laid down in the order is as under :

"The Audit/Accounts Officers in the scale of Rs.2375-75-3200-EB-100-3500 with a minimum of three years regular service will be eligible for promotion to the scale of Rs.2200-75-2800-EB-100-4000. The promotions will be made after following the due process of promotion by adopting the principle of seniority cum-fitness. As the posts in the scale of Rs. 2200-75-2800-EB-4000 are in the functional promotional grade, benefit of FR 22 I (a) (1) (Old FR 22-C) will be admissible on appointment of this scale."

3. From the aforesaid <sup>u</sup>criteria it is clear that the seniority was the <sup>basis</sup> ~~criteria~~ for selecting for promotion subject to fitness. It was not <sup>a</sup> selection post, no higher responsibility were created. Thus the fitness was to

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be judged on the basis of the service record of the applicant alone and not in comparison of the others.

4. In counter affidavit it has been stated that the applicant was not granted promotion as the last A.C.R. of the applicant was of average <sup>grading</sup>. Learned counsel for the applicant on the other hand placed before us, the letter dated 4.2.92 (annexure A-1) and letter dated 31.1.94 (annexure A-2) in which his work and conduct was highly appreciated. The average entry <sup>Can't be</sup> ~~is~~ not taken to be adverse, it was not communicated to the applicant for any explanation or for taking any action <sup>against</sup> ~~for~~ the same.

5. In the circumstances the average entry awarded to the applicant in ACR could not be taken to be adverse, in other words <sup>he</sup> ~~it~~ could not be treated to be unfit for promotion.

6. For the aforesaid view, we find support from the criterion laid down by OM no. 22011/10/84-Estt (D) dated 04.02.92. Para 2 (2) whereof which is important and relevant for the present controversy, which reads as under :

"(2) Where the upgradation involves a higher replacement scale without higher responsibilities or higher qualifications but with a higher eligibility service, the incumbent need not be assessed for their suitability but it should be ensured that they have completed the requisite qualifying service for appointment to the upgraded post. In case they had completed the qualifying service on or before the date notified by the Government, they may be appointed to the upgraded post from that date. In the case of others who

fulfil the qualifying service on a later date, they should be appointed to the upgraded post from the date on which they completed the qualifying service. This would be, subject to the condition that irrespective of the date of appointment, the original seniority of the incumbent in the grade prior to upgradation will be maintained for appointment to the upgraded post."

7. Shri D.S. Shukla, learned counsel for the respondents on the other hand submitted that as the committee has considered the case of the applicant for promotion and rejected his claim, ~~as~~ he is not entitled for any relief. It is also stated that as only 80% of the strength of Audit/Accounts Officer was available, in case applicant is promoted, some officer shall be effected, but they have not been impleaded and applicant is not entitled for the relief. Learned counsel for the respondents has placed reliance in case of State Bank of India Vs. Mohd. Mynuddin, AIR 1987 SC 1889.

8. We have considered the submission made by learned counsel for the parties.

9. In our opinion, the applicant is entitled for relief as for no fault of his own, <sup>as it has been</sup> ~~he is~~ denied ~~for~~ promotion on the basis of misconception about the <sup>on</sup> criteria laid down for promotion by order dated 22.09.92 and other Govt. orders available in this respect. <sup>on</sup> The <sup>judgement</sup> ~~judgement~~ relied by learned counsel for the respondents cannot be applied in this case, as it was not a selection post and

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comparative merit of the officers was not required to be considered but only applicant's fitness was required to be considered individually. In our opinion the applicant is entitled for relief.

10. The OA is accordingly allowed. Respondents are directed to consider the claim of the applicant afresh for promotion in the light of the observation made in the order. If the applicant is found entitled for promotion consequential benefits shall also follow. This order shall be complied with, within a period of four months from the date of communication of this order.

11. No order as to costs.



Member-A



Vice-Chairman

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