

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 1077 OF 1998.

ALLAHABAD, THIS THE 20th DAY OF OCTOBER 2005

HON'BLE MR. A.K. BHATNAGAR, MEMBER-J.
HON'BLE MR. D.R. TIWARI, MEMBER (A)

Mangal Prasad
Aged about 56 years
Son of late Ram Jiyawan
Resident of C/o K.N Jaiswal
58/14-A, Muir Road, Allahabad.

..... Applicant.

(By advocate : Shri A. Srivastava)

V E R S U S

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Financial Advisor, Defence Services, Government of India, South Block, New Delhi.
3. Controller General of Defence Accounts, (West Block)-V, R.K. Puram, New Delhi.
4. Chairman, Union Public Service Commission, Dholpur House, New Delhi.
5. Chief Controller of Defence Accounts, (Personnel), Draupadighat, Allahabad.

..... Respondents.

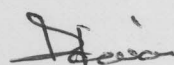
(By Advocate : Shri S. Singh)

O R D E R

By HON'BLE MR. D.R. TIWARI, MEMBER (A)

By this O.A. filed under section 19 of the A.T. Act, 1985, the applicant has prayed for the following relief(s):-

- "i) This Tribunal may kindly be pleased to set aside the order dated 24.8.1998 (Annexure A-1) to the Compilation No.1 of this original application.
- ii) A direction may be issued to respondents No.3 and 4 to reconsider the candidature of the applicant by holding the review D.P.C of 1998 for giving promotion in Junior Time Scale of Indian Defence Accounts Service as per the law laid down by the Hon'ble Supreme Court referred to above and a further direction may be issued to respondents NO.3 and 4 to promote the applicant as per the law laid down in the case of State of Gujarat Vs. S. Tripathy (1986-SCC (L&S) 373).



- iii) A further direction may be issued to the respondent No.3 that in case the applicant has not been declared unfit in view of his past performance the due promotion may be given to the applicant in Junior Time Scale in I.D.A.S and his seniority may accordingly be fixed prior to the candidate who have been promoted from the roster of 1997 at Sl. No.112.
- iv) A further direction may be issued to grant all consequential benefits including the monetary benefit, seniority etc. as if the applicant has been given promotion in the year 1998 in view of findings given by the D.P.C. held in June 1998".

2. Briefly stated, relevant factual matrix to decide the controversy is that the applicant was inducted as temporary Upper Division Clerk on 16.1.67. He was posted in the office of Accounts Officer, Gun Carriage Factory, Jabalpur. After passing the Subordinate Account Service Examination (S.A.S), he was promoted on 18th July 1977 as Section Officer and was posted in the office of Pay and Accounts Office, Corps and Signal District Jabalpur. On 1st April 1987, he was promoted on the post of Senior Accounts Officer and was posted in the office of Chief Controller of Defence Accounts (Pensions), Allahabad. In the seniority list of 1994, his name finds place at Sl. No.420 (Annexure A-2). The next promotion to the post of Junior Time Scale of Indian Defence Service is seniority-cum-merit. In July 1997, a promotion order to the post of I.D.A.S. Officer was issued where the candidates upto the roster No.416 were considered for promotion. The promotion list did not reflect his name.

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3. The main grievance of the applicant is non selection as he enjoyed the blotless career and he has never been awarded any adverse entry during his service career. He has challenged the order of promotion on various ground mentioned in para 5 of the O.A. The impugned order is arbitrary, illegal and unjust. Non consideration of his candidature by the D.P.C is arbitrary. It has been pleaded that Rule 24 of Indian Defence Accounts Services Recruitment Rules, 1958 has provided that the promotion to the Junior Time Scale of I.D.A.S will be made by selection cum merit with due regard to the seniority from among the member of the Group 'B' gazetted officers who have completed 3 years of service in the grade. Since he has not been communicated about any adverse entry in his A.C.Rs, it is presumed that he never earned any entry below the bench mark for the promotion. It has also been pleaded that his representation has been decided in a very arbitrary manner without giving any reason as to why he has been superceded. He prayed for allowing the O.A.

4. The respondents, on the other hand, has submitted that Group 'B' Gazetted Officers who have completed 5 years regular service and not 3 years as contended by the applicant are eligible for consideration and as and when they fall in the zone of consideration. Provisions of Rule 24 of

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the Indian Defence Accounts Service has to be read with procedural guidelines issued by the Department of Personnel and Training to be observed by the Departmental Promotion Committee from time to time. They have further argued that promotion to junior time scale in I.D.A.S is based on selection on merit with due regard to the seniority. The interpretation given by the applicant that Senior employee cannot be overlooked only if he is not found unfit only is his own presumption. It has been further submitted that as admitted by the applicant his roster number was 420 and his name was not considered by the Departmental Promotion Committee as the officer upto roster NO.416 have only been considered by the D.P.C for the promotion held in 1997. It is clear that he did not fall in the zone of consideration. In view of this position, the grievance of the applicant is misplaced and the O.A. deserves to be dismissed.

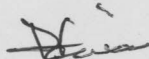
5. During the course of the argument, counsel for the applicant as well as counsel for the respondents have reiterated the facts and the legal pleas from the respective pleadings of O.A. and counter affidavit. Counsel for the applicant laid emphasis on the fact that he never earned any adverse remarks and the promotion to the post of Junior Time Scale of I.D.A.S is based on merit-

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cum-seniority subject to being declared unfit. The counsel for the respondents has refuted this claim by the statement that this is a selection post and the Rule 24 of the Rules *ibid* is clear on this point. It has been submitted that the D.P.C while considering the case of the candidate takes into account the guideline formulated in this regard by the Department of Personnel and Training. They have further argued that even the applicant had admitted that his name figured at Sl. NO. 420 whereas the D.P.C considered the candidates of Sl. No.416 only. In view of this, it cannot be said that the D.P.C has ignored his promotion on the ground of adverse entry. It is also not the case of the applicant that the D.P.C has failed to consider his case, as such the O.A. is meritless and deserves to be dismissed. No other arguments were submitted or pressed into service by either of the parties.

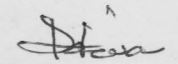
6. We have heard counsel for the parties at length and given due consideration to the rival submissions made by the counsel for the parties. We have also perused the pleadings and other materials annexed therewith.

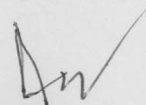
7. The only question which falls for consideration is the validity of the impugned order in question. It is settled legal position



that promotion from Group B Gazetted to Group 'A' is always on the basis of selection. Seniority, ofcourse is a criterion involved in this regard, but this is not the only one criterion. It is also not the case of the applicant that he was within the consideration zone and has been ignored. He has himself admitted that his name figured at Sl. NO.420 and the 'candidates/Group 'B' officers whose name figured upto Sl. No.416 had been considered by the D.P.C. From this, it is clear that he was not even in the consideration zone for promotion in question. In view of this the O.A. is liable to be dismissed.

8. In view of the facts and circumstances mentioned above and the discussion made, the O.A. is devoid of merit and is accordingly dismissed. There is no justification to interfere with the impugned order which has been passed validly by the respondents. Cost easy.


Member-A


Member-J.

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