

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 24th day of March, 2003.

QUORUM : HON. MAJ. GEN. K.K. SRIVASTAVA, A.M.

HON. MR. A. K. BHATNAGAR, J.M.

O. A. No. 1009 of 2001

Y.N. Chaubey S/O Dr. R.N. Chaubey, Assistant Labour Welfare  
Commissioner, 508, Army Base Workshop, the Fort, Allahabad.

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..... Applicant.

Counsel for applicant : In person.

Versus

1. Union of India through Secretary, Ministry of Labour, Govt.  
of India, Shram Shakti Bhawan, Rafi Marg, New Delhi.

2. Director, GLS-I, Ministry of Labour, Shram Shakti Bhawan,  
Rafi Marg, New Delhi.

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..... Respondents.

Counsel for respondents : Sri J.N. Shama.

O R D E R (ORAL)

BY HON. MAJ. GEN. K.K. SRIVASTAVA, A.M.

By this O.A., filed under section 19 of A.T. Act, 1985, the applicant has challenged the letter dated 19.4.2001 (Annexure-4) rejecting the representation of the applicant dated 27.7.2000. The applicant has prayed to quash the order dated 19.4.2001 and also to declare the maintenance and consideration of ACR in the promotion as illegal and constitutionally invalid.


2. The facts, in short, giving rise to this O.A., are that the applicant joined the Central Labour Services as an Officer in Grade V in March 1988. He was posted as Assistant Labour Welfare Commissioner Central at Ordnance Clothing Factory (OCF), Shahjahanpur. In May 1998 from Bangalore, the applicant joined Ordnance Clothing Factory, Shahjahanpur on 10.5.1998. During the year 2000, juniors to the applicant, on the basis of recommendations of the DPC, were promoted on ad-hoc basis as Grade-IV in Central Labour Service, ignoring <sup>in (in short CLS) the</sup>



the seniority of the applicant. The applicant, aggrieved by the action of the respondents, filed representation on 27.7.00 which has been rejected by impugned order dated 19.4.2001, in pursuance of the order of this Tribunal dated 2.1.2001 passed in O.A. No.1444/00 hence this O.A. which has been contested by the respondents by filing counter affidavit.

3. The applicant, who appeared in person, submitted that during the year 2000, his juniors were promoted as Grade-IV but he has been ignored though he was never intimated about any adverse entry in his ACR. The applicant further submitted that in absence of any adverse entry and also any disciplinary action against him, the action of the respondents in not promoting the applicant to Grade-IV on ad-hoc<sup>basis</sup> is arbitrary, discriminatory and illegal. He also submitted that as already held by Hon'ble Supreme Court of India in Civil Appeal No. 356-360/99, Civil Appeal No.361-362/99 Union of India Versus Maj.Gen. Rajendra Singh Kedia & others, decided on 28.7.2000, ACR does not hold any legal and constitutional validity. A similar view has been taken by Hon'ble Allahabad High Court in number of decisions that communication of remarks of the ACR is must if they adversely affect the promotional chances. Since no such communication was ever made to the applicant, he had no doubt in his mind that he would<sup>not</sup> be superceded by his juniors.

4. Resisting the claim of the applicant Sri J.N. Shama, learned counsel for respondents submitted that the ACRs of the applicant were considered<sup>upto</sup> for 1999-2000 and on the basis of the same the applicant was not found fit for promotion as he was lacking in the required bench mark of 'Good' in his ACR in comparison to his juniors. Learned counsel for the respondents further submitted that the applicant has now been promoted to Grade-IV vide order dated 17.7.2003 retaining his position as per his seniority and no injustice has been done with him. Learned counsel for respondents further submitted that the applicant has no vested right to challenge the ad-hoc promotion.





5. We have heard the applicant in person and Sri J.N. Shama, learned counsel for respondents, carefully considered their submissions and closely perused the records. We have also perused the ACR file of the applicant produced before us by respondents as was directed vide order dated 14.2.2002.

6. The applicant, while opposing the claim of the respondents in respect of ad-hoc promotion, submitted that he is adversely affected because of the pay fixation in the new grade of his juniors who have been working in Grade-IV on ad-hoc for the last three years and the same is going to affect the applicant adversely. On perusal of the ACRs of the applicant starting from 1991-92 to 1999-2000, we find that the applicant has been given number of adverse and advisory remarks, which were never communicated to the applicant. The law on the subject is well settled that any adverse entry not communicated to the individual will have no effect whatsoever. The respondents have attached the statement showing grading of officers in Grade-V of CLS. The ACRs from 1991-92 to 1999-2000 have been considered by the DPC for recommending ad-hoc promotion as has been admitted by the respondents counsel.

7. We would like to quote some of the remarks given by the Reporting as well as Reviewing Officers as under:-

1991-92

EXECUTIVE ABILITIES:- The officer can handle the job of routine nature individually. However, he requires guidance as handling of tasks of complexed nature.

44:

DECISION MAKING ABILITY:- Requires guidance and assistance while taking decisions on matters of complexed nature.

Similar remarks have been given in the many ACRs from 1991-92 onwards. We would like to reproduce the remarks given in ACR for 1993-94 (23.11.1993 to 31.3.1994) as under:-

NAIURE AND QUALITY OF WORK :- Though the reporting period is short and the officer is new to the organisation, he has not shown keenness to acclamatise.

EXECUTIVE ABILITIES :- He is found wanting in these spheres.

COMMUNICATION SKILL :- He is not communicative and is not inclined to express his views properly in his role as Labour Officer.

GENERAL ASSESSMENT :- Officer being new to this industrial establishment, he is yet to adjust in the new set up. His performance is to be watched further. However, in the limited assignments involved by him, he has been found to be ineffective and to lack clarity.

8. We would like to stop here because such types of remarks have been given almost in every ACR upto 1999-2000. From no stretch of imagination, the remarks of the above types can be termed as not adverse. In our view, these are certainly adverse remarks which ought to have been communicated. To us it appears that no chance of improvement was given to the applicant and the authorities concerned tried to avoid communicating the same to the applicant by just giving the grading of average except during 1993-94,


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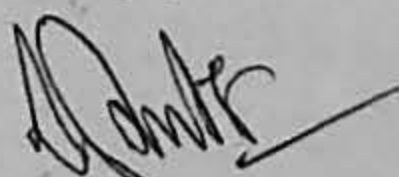


1995-96, 1996-97 and 1998-99. In our opinion, gross injustice has been done to the applicant by not considering the applicant for ad-hoc promotion as CLS Grade IV. However, since the applicant has been given his due promotion vide order dated 17-3-2003 maintaining his seniority, the relief 8(iii) becomes infructuous. The only question which crops up before us here is that since the applicant was not given ad-hoc promotion from 2000, when his juniors were given the promotion, it is bound to affect his pay fixation and to this extent the interest of the applicant requires to be protected. Before we pass an order, we would also like to give an advice to the applicant that his challenging the action of the respondent in writing ACRs and terming the same as illegal and <sup>un</sup>~~non~~-constitutional is totally misconceived. He should get out of such misconceptions. We put a question to the applicant whether he was writing the ACRs of his sub-ordinates and the reply given by the applicant was in affirmative. In that case there is a self contradiction on the part of the applicant.

9. For the reasons stated above, the O.A is partly allowed. The pay of the applicant in CLS Grade-IV shall be fixed keeping in view the pay fixed in respect of his juniors which may be higher due to their ad-hoc promotion to CLS grade-IV. The respondents are directed to fix the pay of the applicant viz-a-viz his immediate junior who worked on adhoc basis in grade-IV from the year 2000, within three months from the date a copy of this order is filed and the arrears, if any, shall be paid within one month thereafter. We also provide that for future promotions, the remarks given in the ACRs up to 1999-2000 shall be ignored.

There shall be no order as to costs.

  
Member(J)

  
Member(A)

Asthana/