

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the **21st** day of **September**, 2021

Original Application No. 330/00068/2016

Hon'ble Mr. Tarun Shridhar, Member (Administrative)
Hon'ble Ms. Pratima K Gupta, Member (Judicial)

Ashok Kumar Agrawal, aged about 59 years, S/O Late Fakir Chand Agrawal, Resident of Baikunth Bhawan, Gandhi Marg, Etah-207001.,at present serving as Divisional Accounts Officer, In the Office of Executive Engineer, Flood Division, Tube Bell Colony, Moradabad.

. . . Applicant

By Advocate : Shri Chaturbhuj Dwivedi
Shri Sachin Upadhyay

V E R S U S

1. Union of India, Ministry of Finance, through the Comptroller & Auditor General of India, New Delhi.
2. The Comptroller & Auditor General of India, New Delhi.
3. The Accountant General (A&E)-II, U.P. Allahabad.
4. No 702 B D Suwarchas, Divisional Accounts Officer, Grade-I, Office of Executive Engineer, Mechanical Temporary Division, Lucknow.
5. No 729 Ashok Kumar Shukla, Divisional Accounts Officer, Grade I, Office of Executive Engineer, Fatehpur.
6. No 758, Mahesh Chand Second, Divisional Accounts Officer, Grade I, in the office of Executive Engineer, Provincial Division, PWD, Sidharth Nagar.
7. No 759 Rajesh Kumar Sharma, Divisional Accounts Officer, Grade I, Office of Executive Engineer, R.E.S., Buland Shahar.
8. No 763 Sunil Kumar Sharma, Divisional Accounts Officer, Grade I, Office of Executive Engineer, I.C. Division, Irrigation Construction Division, Ghaziabad.
9. No 764 Naresh Chand, Divisional Accounts Officer, Grade I, Office of Executive Engineer, R.E., Division, Meerut.
10. No 767 Shushil Kumar Saxena, Divisional Accounts Officer, Grade I, Office of Executive Engineer, R.E. Division, Hardoi.
11. No 768 Smt Mini Gujral, Divisional Accounts Officer, Grade I, Office of Executive Engineer, Drainage Division, Meerut.

12. No 769 Mohd Vashiv Akhtar, Divisional Accounts Officer, Grade I, Office of Executive Engineer, R.E. Division, Allahabad.
13. No 770 Sandip Mishra, Divisional Accounts Officer, Grade I, Office of Executive Engineer, Provincial Division, P W D, Barabanki.
14. No 771 Indrapal, Divisional Accounts Officer, Grade I, Office of Executive Engineer, Irrigation Construction Division Jhansi.
15. No 772 Chandra Prakash Rai, Divisional Accounts Officer, Grade I, Office of Executive Engineer, Flood Works Division, Barabanki.
16. No 773 Tej Narain Singh, Divisional Accounts Officer, Grade I, Office of Executive Engineer, Provincial Division, P.W.D., Azamgarh.

...Respondents

By Adv: Shri Rajnish Kumar Rai

O R D E R

By Hon'ble Mr. Tarun Shridhar, Member (Administrative)

Shri Chaturvedi Dwivedi, Shri M.K. Upadhyay, Shri Sachin Upadhyay, learned counsel for the applicant and Shri D. Tiwari, holding brief of Shri R.K. Rai, learned counsel for the respondents are present.

2. By this original application the applicant is seeking the following reliefs:-

- “A. *To issue a writ, order or direction in the nature of Certiorari to quash the impugned order dated 29.07.2015 (Annexure A-1 Compilation No.1) passed by Respondent No.3.*
- B. *To issue a writ, order or directions in the nature of Mandamus directing the Respondent No.3 to promote the applicant as Divisional Accounts Officer Grade I from 11.04.2005 from the date when his immediate Junior was promoted with further directions to pay the arrears of the pay and allowances for promotional post from 11.4.2005 and grant all consequential benefits to him.*
- C. *To issue another writ, order or direction in favour of the applicant as deem fit and proper in the circumstances of the case.*
- D. *Award the cost of application in favour of the applicant.”*

3. The brief facts of the case are that the applicant who is presently serving as Divisional Accounts Officer Grade I was due for promotion in accordance with the Gradation list of the year 2003, 2005 and 2006. However, the DPC considered him to be unfit for the said promotion on account of an adverse entry in his Annual Confidential Report of the year 2002-2003. At a later stage his adverse entries were expunged. However, even after this development the applicant was denied promotion as in subsequent developments the applicant was subjected to disciplinary proceedings under Rule 14 of the Central Civil Services (Clarification, Control and Appeal) Rules, 1965.

4. Learned counsel for the applicant argues that a chargesheet in the disciplinary proceedings was issued to the applicant on 10.03.2006 whereas the claim of the applicant is for consideration to the promotional post of Divisional Accounts Officer Grade I in the year of 2005 and 2006, precisely during the period from 11.04.2005 to 13.01.2006, and during this period there was no disciplinary proceeding contemplated or pending against the applicant and on the other hand the adverse consequences of the remarks in the ACR had been set aside by way of expunging those remarks.

5. Learned counsel for the respondents on the other hand argues that the relevant point for consideration is the status of the applicant on the date when the DPC is being conducted and the applicant on account of the earlier adverse remarks in the ACR and the pending disciplinary proceedings, could not be considered in the subsequent DPC in 2007. As and when the impact of penalty upon the applicant in the disciplinary proceedings was over, the applicant has been accorded the promotion to the post of Divisional Accounts Officer Grade I.

6. We have heard learned counsel for the parties carefully and also gone through the documents on record.

7. It is nowhere contested that the applicant on account of his Gradation list was eligible to be considered for promotion during the period from 11.04.2005 to 13.01.2006 and there had been no adverse remarks in the ACR probably he would have been found fit subject to other requirements for promotion. He would have enjoyed the benefits of higher post from that period onwards. Since the adverse remarks had got expunged subsequently it was incumbent upon the respondents to review the position obtained in the year 2005-06 to consider the claim of the applicant in the light of the subsequent development i.e. the expunging of the adverse remarks of the ACR. Taking recourse to the arguments that at a later date disciplinary proceedings got initiated against him, is not a sufficient ground to deny the benefit which would have in the normal course accrued in the past. If this situation is accepted, an employee could be subjected to prolonged harassment time and again, and denied his bonafide claim.

8. Accordingly, the order dated 29.07.2015 captioning "representation dated 15.09.2014 against delayed promotion to Divisional Accounts Officer Grade-I cadre" issued by the Senior Administrative Officer (Appt.-III) is quashed and set aside. The original application is allowed with a specific direction to the respondents to undertake a review of the DPC held during the period 11.04.2005 to 13.01.2006 and consider the claim of the applicant with respect to the status as it was obtained during that period. To clarify, the adverse remarks in the ACR which stood expunged would not stand in the way while taking the decision. It is further directed that the DPC should make its own independent assessment to consider the fitness of the

applicant. The order will be complied with within a period of two months from the date of receipt of certified copy of this order. No costs.

(Pratima K Gupta)
Member (Judicial)

(Tarun Shridhar)
Member(Administrative)

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