

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Original Application No. 1128 of 1992
Transfer Application no.

Date of Decision 26-2-99.

Sri S.K.Nanda

Applicant(s)

Counsel for the Applicant Shri R.C.Sinha

**Counsel for the
Applicant(s)**

VERSUS

Union of India & others

Respondent(s)

Shri S.C.Tripathi

**Counsel for the
Respondent(s)**

COURT

Hon'ble Mr. S. L. Jain Member J)

Hon'ble Mr. G.Ramakrishnan Member (A)

1.

**Whether Reporters of local papers may be allowed to
see the judgment ?**

No

2.

To be referred to the Reporters or not ?

YES

3.

**Whether their Lordship wish to see the fair copy of
the judgment ?**

YES

6.

Whether to be circulated to all Benches ?

No


(SIGNATURE)

ts

PIYUSH/

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

DATED: THIS THE 26th DAY OF FEBRUARY 1999

Coram : Hon'ble Mr. S. L. Jain JM
Hon'ble Mr. G. Ramakrishnan AM

ORIGINAL APPLICATION NO.1128 Of 1002

Sri S. K. Nanda son of Shmabhu Nath Nanda,
resident of Military Farm,
Meerut. - - - - - Petitioner

C/A Sri R. C. Sinha

Versus

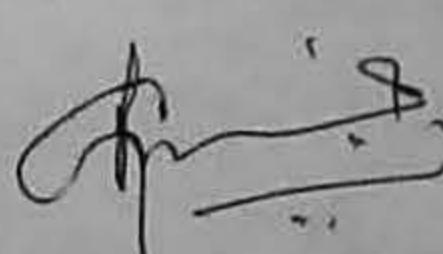
1. Union of India through Secretary,
Ministry of Defence,
New Delhi.

2. Dy. Director General of Military
Farms (M.F.2), Quarter Master Generals
Branch, Army Headquarters
(West Block) III, R.K.Puram,
New Delhi.

3. Dy. Director of Military Farms,
Headquarter Canbel Command,
Lucknow.

4. Officer Incharge,
Military Farm, Meerut - - - - - Respondents

C/R Shri S.C.Tripathi.



ORDER

By Hon'ble Mr. G. Ramakrishnan AM

This is an application under section 19 of the Administrative Tribunals Act, 1985 against the panel formed on the recommendations of the Departmental Promotion Committee (D.P.C. for short) of group 'C' personnel of Military Farm for promotion from Upper Division Clerk to Superintendent grade II dated 24.7.1992 in which the applicant's name does not appear.

2. The applicant who was appointed on 24.5.56 as Lower Division Clerk in Remount Veterinary branch Headquarter, U.P. Bareilly, while working in the Military Farm, Meerut (from 1965) was promoted as Upper Division Clerk on 1.7.1978 where he had been since then. The applicant claimed in the O.A. that he was the seniormost Upper Division Clerk eligible for consideration for promotion to the post of Office Superintendent grade II in the year 1991 and 1992. The applicant stated that on 24.11.1987, Ministry of Defence issued a policy circular letter for promotion to various cadres (Annexure A-1). He also enclosed annexure A-2 copy of Department of Personnel and Training (D.O.P.&T) O.M. dated 10.3.1989 circulated under Ministry of Defence letter dated 9.8.1989 detailing procedure for D. P. C. He also annexed a copy of the Ministry of Defence letter dated 7.3.1990 (Annexure A-3) by which the instructions issued on 24.11.1987 (Annexure A-1) was cancelled. Based on this the applicant stated that criteria for promotion to the post of Office Superintendent, from the post of U. D. C. was the order of their interse seniority in lower



category without reference to the overall grading obtained by each of them. He stated that a number of juniors to him were empaneled for promotion to the post of Office Supt. grade II vide panel dated 24.7.1992. According to the applicant, he has a right to be considered by the D.P.C. for promotion and he alleged that he had not been considered by the D.P.C.. He stated that prior to date of holding of D.P.C. on 4.7.1992, he was not under any charge-sheet nor any disciplinary proceeding was commenced against him. According to the applicant even if a charge sheet is pending against him consideration for promotion to higher grade cannot be ignored rendering disciplinary proceedings against him and that in such a situation Sealed Cover Procedure should be followed as per extant rules. In support of his claim, he quoted the following cases.

(i) State of MadhyaPra-desh V/s Bani Singh reported in 1990 SCC 738.

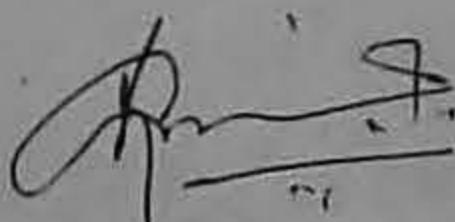
(ii) Lachman Das Gandhi V/s Union of India reported in 1192 20 ATC 100

(iii) K.Ch.Vankata Reddy V/s Union of India and others reported in 158 CAT

(iv) TA 1316/87 Ram Asre V/s Union of India and others decided by C.A.T.Allahabad.

3. The applicant prayed for the following reliefs :-

(a) a direction may be issued to declare the action of the respondents to hold Departmental Promotion Committee on 13.4.1992 and 21.4.92 for



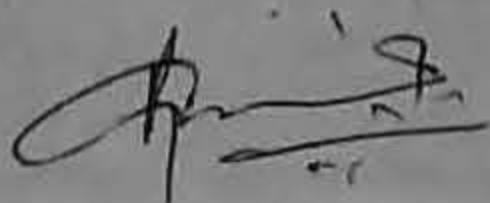
the promotion to the post of Office Superintendent from U.D.C. for the year 1989, 1990, 1991 and 1992 simultaneously illegal, arbitrary and against the principles of natural justice.

(b) a direction may be issued to quash the panel of U.D.C. for Officiating promotion to the grade of Office Superintendent grade II made on 24.7.1992 in view of D.P.C. held on 13.4.1992 and 21.4.1992 in respect of the year 1991 and 1992.

(c) a direction may be issued to the respondents to hold review D.P.C. and to consider the candidature of the petitioner for promotion to the post of Office Supdt. grade II from the U.D.C. in review D.P.C.

(d) a direction may be issued to the respondents to promote the petitioner w.e.f. the date his juniors has been given promotion if the petitioner is found fit in the review D.P.C.

4. Respondents resisted the claim of the applicant by filing counter affidavit. They stated that Govt. of India's letter dated 24.11.1987 was cancelled by means of letter dated 7.3.1990 and as such instructions contained in letter dated 24.11.1987 were no longer valid. They stated that post of Office Supdt. grade II is filled up by promotion on holding selection and not merely on the basis of seniority. They asserted that the name of the applicant was considered by the D.P.C. and D.P.C. awarded him over all grading lower than the Bench Mark of 'Good' and, therefore, his name could not find place in the Select list. They also stated that this is as per instructions contained in letter dated 8.8.1989 where it had been stated that the



A4

Officers whose over all grading is equal to or better than the Bench Mark of 'Good' should only be included in the panel. They stated that the name of the applicant was considered by the D.P.C. and on account of lower grading, his name could not be included in the panel for promotion to the post of Office Supdt .grade II. They stated that the case laws cited by the applicant had no relevance in this case.

5. In the rejoinder filed, applicant reiterated the points stated in the O.A. Specially the applicant had, in reply to that para of the counter affidavit (para ii) wherein the respondents had stated that the name of the applicant was considered, had only stated that the same (i.s. this para 11 of the C.A.) need no comments. Applicant further questioned the grading awarded to him by the D.P.C. stating that as no adverse remarks were communicated to him and as per prescribed procedure when lower than below average is awarded to an individual, communication has to be made to him, D.P.C. cannot award him grading lower than 'Good' from the Annual Confidential Report.

6. We heard the learned counsels for the parties. During the course of hearing, learned counsel for the respondents submitted that he would produce the records if necessary and accordingly it was ordered, but the learned counsel did not produce the records (D.P.C.) proceedings).

7. We have given careful consideration to the rival pleadings and perused the records. The applicant's main contention in the O.A. was that even though he cannot claim promotion as a matter of right, he had a right of consideration for promotion ~~XXXXXX~~

...as per law laid down. His pleas gave an impression that he was undergoing penalty or was facing disciplinary proceedings and because of that he was not considered by the D.P.C. especially because all the case laws cited by him were cases of that nature and consideration by the D.P.C. under "Sealed Cover Procedure". However, in the reply given by the respondents they had categorically stated that the applicant was considered by the D.P.C. for promotion from Upper Division Clerk to Office Supdt. grade II but as he was given a grading lower than 'Good' - prescribed bench mark required for fitness for promotion-he was not empanelled. The applicant contended that the D.P.C. could not have awarded him an over all grading lower than the bench mark of 'Good' because he had not been communicated any adverse remark and as per laid down procedure if the grading in any year's confidential report is below 'average' then the same should have been communicated. We have given careful consideration to this ground of the applicant. In this context para 2.1.4 of the D.O.P&T guide-lines to the D.P.C. circulated under O.M. dated 10.3.1989 (Annexure A-2) appears relevant. This para reads as follows :

* Government also desires to clear the misconception about 'average' performance. While 'average' may not be taken as an adverse remark in respect of an Officer, at the same time it cannot be regarded as complimentary to the Officer, as 'average' performance should be regarded as routine and undistinguished. It is only performance i.e. above average and performance that

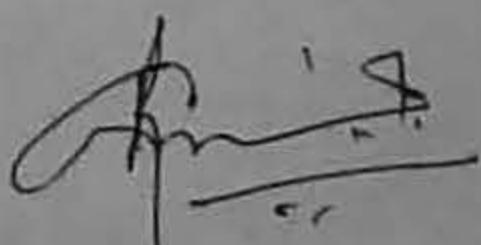


is really noteworthy which should entitle an Officer to recognition and suitable rewards in the matter of promotion."

It would appear from the above that even without any adverse remark being communicated to an Officer, he could still be awarded an over all grading lower than 'Good'. As the applicant had himself stated in the Rejoinder affidavit that only below 'average' grading is to be communicated, his grading could have been lower than 'Good' but above 'below average' and the D.P.C. could have awarded him an over all grading lower than 'Good'.

8. The next point urged by the applicant was that the procedure for promotion from U.D.C. to Office Supdt. grade II is by means of non-selection process. Respondents stated that the promotion is to be done by selection. We accept the version of the respondents keeping inview of the submissions made by the applicant himself in para 4(vi) and 5(b) of the O.A.

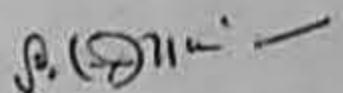
9. D.O.P & T's O.M. dated 10.3.1989 in para 2.4.1 gave detailed procedure, as to how if for reasons beyond control, the D.P.C. could not be held in a year(s) even though the vacancies arose during that year (or years) when the first D.P.C. meets thereafter. From Annexure A-4, we come to the conclusion that these instructions have been followed by the D.P.C. After giving careful considerations to the pleadings made by the parties, we also come to the conclusion that the production of records is not necessary.

A handwritten signature in black ink, appearing to read "A. S." or "A. S. S.".

10. In the light of the detailed findings made by us, the applicant does not become entitled for the reliefs sought and this O.A deserves to be dismissed . Accordingly this O.A. is dismissed with no order as to costs.



Member (A)



Member (J)

SQI