

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1327 OF 2002
ALLAHABAD THIS THE 25th DAY OF August 2003

HON'BLE MAJ. GEN. K.K. SRIVASTAVA, MEMBER-A
HON'BLE MR. A. K. BHATNAGAR, MEMBER-J

Shri R.K. Anand,
son of Late Shri K.G. Anand
resident of H.No.32,
Sector 7, Urban Estate,
Gurgaon - 122001,
presently posted as Joint Comtroller of
Defence Accounts,
Pr. CDA (Pensions),
Allahabad - 211014.

.....Applicant

(Applicant in person)

Versus

1. Union of India,
through Defence Secretary,
Ministry of Defence,
South Block,
New Delhi - 110001.
2. The Chairman,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi - 110011.
3. Controller General of Defence Accounts,
West Block - V,
R.K. Puram,
New Delhi - 110066.
4. Pr. Controller of Defence Accounts (Pensions),
Draupadi Ghat,
Allahabad - 211014.
5. Sh. N. Neihsial, IDAS,
IFA(NC), HQrs,
Northern Command,
Udhampur (J&K).
.....Respondents

(By Advocate Shri G.R. Gupta)

O R D E R

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER-A

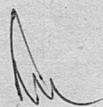
In this O.A filed under section 19 of Administrati
Tribunals Act 1985, the applicant has prayed for the followi



reliefs:-

- "i) That the panel for the selection of officers to the Senior Administrative Grade of Indian Defence Service (IDAS) constituted by the DPC meeting of 7.5.2002 may kindly be quashed.
- ii) That, the respondents 1 to 4 be directed to expunge such entries in applicant's record that have adversely affected his promotion and were made without following the laid down procedure of properly advising the applicant.
- iii) That, it is further prayed that respondents 1 to 4 be directed to order applicant's promotion to the Senior Administrative Grade of IDAS wef due date and prior to his juniors already promoted.
- iv) That, the applicant should be granted his promotion with all consequential benefits in the order of seniority and with financial benefits.
- v) That, suitable compensation may kindly be granted to the applicant for his illegal mental torture and humiliation.
- vi) That, any other cost or relief as your lordship may deem fit and proper in the facts and circumstances of the case.
- vii) That, the applicant prays that the respondent 3 be directed to bring the orders of promotion of all juniors on record and thereafter quash the same."

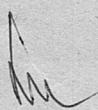
2. The facts of the case, in short, are that the applicant was appointed to the Indian Defence Accounts Service (in short IDAS) on 12.07.1979. The applicant was promoted as Deputy Controller with effect from 12.07.1983. In March 1991 the applicant was promoted to the rank of Joint CDA and was promoted to the selection grade of Joint CDA in July 1994. The applicant filed O.A. No.1936/01 before Principal Bench of this Tribunal which was finally disposed of by order dated 12.11.2000 ordering the respondents for re-consideration of the applicant claiming for promotion to Senior Administrative Grade ignoring uncommunicated 'good' gradings. The respondents challenged the order of the Principal Bench dated 12.11.2001 before Hon'ble High Court of Delhi. The Hon'ble High Court by order dated 27.02.2002 upheld the judgment of the Principal Bench



dated 12.11.2001. Respondents no.1 and 3 reported holding of Review DPC on 16.04.2002 in compliance with the Principal Bench order dated 12.11.2001 and as per applicant they gave a false undertaking to take final decision 'very shortly' in order to avoid action against them in contempt proceedings before Principal Bench of this Tribunal. The Union of India and others filed SLP before Hon'ble Supreme Court on 02.05.2002 and their Civil Appeal No.7061/02 is pending before Hon'ble Supreme Court. The applicant has alleged that respondent nos.1 and 3 held DPC on 07.05.2002 recommending promotion of some officers junior to the applicant adopting a procedure which is in violation of judicial orders and directions on the subject. The respondents issued a promotion order dated 08.10.2002 in respect of junior officers superseding the applicant. Hence this O.A. which has been contested by the respondents by filing CA.

3. Shri R.K. Anand, applicant appeared in person and submitted that the suitability of the applicant has not been considered in an objective and impartial manner. The applicant has alleged that the DPC has not taken all the material facts into consideration as they were not brought to the notice of DPC by respondents which has resulted in grave error of law. The applicant further submitted that equality of promotion has been denied to the applicant and he has been discriminated against in the matter of promotion in violation of Articles 14 and 16 (1) of the constitution.

4. The applicant also argued that no adverse remark has been communicated to him since 1986. However, if there was anything which were adversely effecting the promotion chances they should have been communicated to him. In, the event of



non-communication of any adverse entry and denying the promotion tantamounts to violation of principles of natural justice. The applicant has placed reliance on the judgment of Hon'ble Supreme Court in U.P. Jal Nigam and Others versus P.C. Jain and others 1996 (1) SLR 743. The applicant has also argued that the action of the respondents is in contravention to the provisions of Government of India, Department of P & A R OM No.21/011/1/77 Estt dated 30th Jan 1978 and also Government of India, Cabinet Secretariat O.M. No.51/5/72 Estt.(A) dated 20.05.1972.

5. Opposing the claim of the applicant Shri G.R. Gupta, learned counsel for the respondents submitted that the applicant has tried to hide certain facts by not stating in the O.A. anywhere that the Review DPC was held on 17.04.2002 in compliance to the order of the Principal Bench of this Tribunal dated 12.11.01 passed in O.A. no.1936/01. The recommendation of DPC could not be implemented since the department filed SLP before Hon'ble Supreme Court and the same was admitted on 10.05.2002. Leave was granted and the impugned order was stayed by Hon'ble Supreme Court on 25.10.2002 in the SLP filed by the department. In view of this it was decided to request for holding a DPC on 07.05.2002. At this moment the applicant refuting the version of the learned counsel for the respondents submitted that the stay is in respect of the DPC held in November 2002 pursuant to the order ~~was~~ passed by Principal Bench on 11.11.2001 which was upheld by Hon'ble High Court of Delhi by order dated 27.02.02. In the present case the applicant submitted that he has challenged the DPC held on 07.05.2002.

6. The learned counsel for the respondents submitted that adverse remarks contained in the ACR are to be communicated as per the extant orders. The DPC considered the case of the

applicant on the basis of overall performance of the applicant and did not find the applicant fit to be promoted to Senior Administrative Grade.

7. The learned counsel for the respondents further submitted that this Tribunal cannot sit in appeal over the decision of the DPC. The O.A. is bereft of any merit and is liable to be dismissed.

8. We have heard the counsel for the parties, carefully considered their submissions and perused records.

9. The present controversy is regarding the applicant's promotion from Selection Grade of Joint CDA to that of Senior Administrative Grade. The present petition has been filed challenging the recommendation of DPC held on 07.05.2002. Admittedly the applicant was not communicated anything adverse nor was any advice of deficiency or decline in performance given. The contention of the applicant that he was not given any opportunity for improvement has not been denied by the respondents. Therefore, this aspect had to be kept in mind by the DPC while assessing the overall performance of the applicant. Besides respondents have nowhere stated that the name of the applicant was considered by the DPC on 07.05.2002 and that the applicant was not found fit.

10. We would like to quote certain decisions before we arrive at the conclusion. It has been decided by the Jabalpur Bench of this Tribunal in the case of Mohan Gupta Versus State of M.P. reported in (1994) 26 ATC page 878 that taking into account un-communicated adverse remark by the DPC vitiates the assessment of the merit. The Jabalpur Bench of the Tribunal has held as under:-

"Before we part, we may also mention that the High Court of Madhya Pradesh, in the case of Shivanand Prasad Vs. Union of India, has held that downgrading the remarks by the reviewing authority without recording reasons and which has bearing on the promotion avenue of an individual, amounts to adverse remarks and if not communicated to the concerned officer, the same have to be ignored. Therefore, the downgrading done by the reviewing authority in the year 1989-90 has to be adjudged in the light of the judgment of the High Court as well as the observations made by us in the body of the judgment. We can understand the reviewing authority expressing opinion about the performance of an officer for good reasons but, altering down gradation without recording reasons has to be ignored."

From perusal of record it appears that the applicant has never been communicated any adverse remark or drop in performance. Therefore, the DPC had to consider this aspect for proper assessment. We would like to observe that the career prospects of an officer depends upon assessment by Reporting Officer/Reviewing Offices/Accepting Authority. We would like to refer to the observations of the Hon'ble Supreme Court in R.S. Dass Versus Union of India reported in AIR 1987 (S.C.) 593.

"It can not be said now-a-days, if one is aware of the facts and currents of life, that simply because categorisation and judgment of the service record of officers are in the hands of senior officer is a sufficient safeguard. There has been considerable erosion in **intrinsic** sense of fairness and justice in the senior officers by all concerned. From the instances of conduct of many, some of senior officers and men in high position, it cannot be said that such erosion is not only unjustified."

Similarly the Hon'ble Supreme Court in the case of S. Ramchandran Raju Versus State of Orissa reported in 1994 (28) Administrative Tribunals Cases page 443 has made the following observations:-

"This case would establish as a stark reality that writing confidential reports bears onerous responsibility on the reporting officer to eschew his subjectivity and personal prejudices or proclivity or predilections and to make objective assessment. It is needless to emphasise that the career prospects of a subordinate officer/employee largely depends upon the work and character assessment by the reporting officer.

The latter should adopt fair, objective, dispassionate and constructive comments in estimating or assessing the character, ability, integrity and responsibility displayed by the Officer/employee concerned during the relevant period for the above objectives if not strictly adhered to in making an honest assessment, the prospect and career of the subordinate officer being put to great jeopardy."

Relying on the judgments of Hon'ble Supreme Court, this Tribunal took similar view in its order dated 17.8.1995 in O.A. No.1837/ in the case of Uday Krishna Versus U.O.I. and Others.

11. In view of the observations made by Hon'ble Supreme Court in the judgment referred to above we have no hesitation in observing that the possibility cannot be ruled out that there could be such a Reporting Officer/Reviewing Officer of the applicant who did not possess enough courage to face open confrontation with the applicant, but at the same time intended to settle personal score by ^{"spoiling"} spelling the applicant's career prospects by giving remarks which may not be communicable but at the same time mark prospects of his promotion to higher grad and thereby the applicant has become victim of bias and prejudi of such Reporting Officer/Reviewing Officer. Bombay Bench of this Tribunal in case of Ganga Dhar Rao Versus Union of India and Others (1993) 23 ATC 680 held that drop in standard of performance as compared to performance of previous years are required to be communicated to the employee even when the entries in confidential reports are not strictly adverse. The Hon'ble Supreme Court in the case of U.P. Jal Nigam and Others Versus P.C. Jain and others 1996 SCC (L&S) 519 has held that downgrading of entry can be adverse. Reasons for such a change in the grading must be recorded in the personal file and the employee must be informed of the change in the form of advice, otherwise the downgrading cannot be sustained.

12. In view of our discussion and case law cited, the O.A is partly allowed. The respondents are directed to communicate

the remarks which may be in the nature of being adverse and also downgrading in overall assessment, if any, done effecting the promotion of the applicant to the Senior Administrative Grade, to the applicant within a period of one month from the date of communication of this order. Representation, if any filed by the applicant for expunction of such remarks be disposed of within a period of two months from the date of receipt of the representation and if the remarks/grading are modified as a result of the representation a Review DPC, to consider ~~the~~ fresh empanelment of the applicant, be convened for Senior Administrative Grade. It has also been submitted by the applicant that probably a Review DPC has been held but the outcome of it is still awaited. In case the applicant makes the grade for promotion in Review DPC he shall be entitled for all consequential benefits including arrears of pay and seniority otherwise the applicant shall be informed of the result of the Review DPC immediately after its recommendations are approved and received back by the department.

13. There shall be no order as to costs.

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Member-J

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Member-A

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