

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Dated : This the 16th day of DECEMBER 2004.

Original Application no. 1467 of 2002.

Hon'ble Mrs. Meera Chhibber, Member (J)  
Hon'ble Mr. S.C. Chaube, Member (A)

Birendra Prasad, S/o late Lalita Prasad,  
r/o 31/38 Stanley Road,  
Allahabad.

... Applicant

By Adv : Sri A.C. Mishra

V E R S U S

1. Union of India, through Defence Secretary,  
Ministry of Defence, New Delhi.
2. Departmental Promotion Committee, through its Chairman,  
Chairman UPSC, New Delhi.
3. Engineer-in-Chief, Army Headquarters, D.H.Q., P.O.,  
New Delhi.

... Respondents

By Adv : Sri A.N. Shukla

O R D E R

By Mrs. Meera Chhibber, JM.

By this OA, the applicant has sought for the following reliefs:-

- "i. to quash the order dated 24.7.2002 and the panel dated 14.3.2002 issued by the Engineer-in-Chief.
- ii. to issue suitable direction to the respondents to declare fresh panel including the name of the applicant in order of seniority for the post of Senior Barrack Store Officer
- iii. to issue any other suitable direction which this Hon'ble Tribunal deems fit in the circumstances of the case."

It is submitted by the applicant that throughout the applicant has been getting his promotion from time to time. He has passed all the examinations and was never communicated any adverse report nor there was any complaint against him. He was promoted



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to the post of Supervisor Barrack Stores Grade I in the year 1979 and was further promoted as Barrack Store Officer (BSO) in the year 1983. He has always been working with almost seniority and devotion where-ever he was posted. He was at sl no. 5 in the seniority list of BSO who are eligible for being promoted to the post of Senior Barrack Store Officer (SBSO). When the letter dated 14.3.2002 was issued, the applicant's name was missing, even though the persons below him were included in the panel dated 16.1.2001. It is submitted by the learned counsel for the applicant that his name ought to have been <sup>placed at</sup> at sl no. 13 of the panel dated 16.1.2001 in place of Sri Diwakar Banerjee.

3. It is submitted by the learned counsel for the applicant that this panel was wrong in as much as Sri N.K. Biswas was already promoted as SBSO in the year 1997-98 itself and Sri YD Gayakward whose name finds place at sl no. 14 has already retired. Therefore, this clearly shows non application of mind. He has thus submitted that since he was holding the post of BSO for 18 years and serving to the entire satisfaction of his superiors, he could not <sup>have been</sup> been denied promotion at the fag end of his career specially when there was no disciplinary case or Court case or enquiry ~~is~~ pending against him.

4. Being aggrieved he gave representation to the Engineer-in-Chief on 19.3.2002, but since no reply was given he filed OA 657/02 which was disposed of on 4.6.2002 with the direction to decide the representation of the applicant. The respondents have now passed the speaking order dated 24.07.2002 which has been challenged by the applicant in the present OA on the grounds mentioned above.

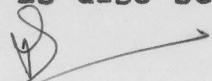


5. The respondents on the other hand have submitted that the applicant was duly considered by the DPC held at UPSC on 12.2.2002 but DPC did not recommended his name for want of requisite merit. The promotion from BSO to SBSO was by selection cum merit. Officers who are junior to him and are promoted had higher grading than the applicant, no injustice has been done to him. They have explained that in the panel dated 16.1.2001 no junior to the applicant was promoted from the post of BSO to the post of SBSO, but due to increase in vacancies a review DPC was held on 12.2.2002 and the name of the applicant was duly considered against the vacancy for the year 2000-2001 and 2001-2002. However, on account of comparative law grading the DPC did not recommend the name of the applicant for promotion as such he could not be empanelled. They have thus submitted that applicant cannot claim his promotion on the basis of seniority alone.

6. They have explained that only such of the persons were recommended who were having higher grading than the applicant and as far as Sri Y.D. Gayakward is concerned he was very much in service on the crucial date of eligibility i.e. 01.01.2001. Therefore, he had to be considered in accordance with the instructions. They have relied on AIR 1987 SC 593 judgment given by Hon'ble Supreme Court in case of R.S. Dass Vs. Union of India & Ors. They have thus submitted that there is no arbitrariness in the action of the respondents as such the OA may be dismissed.

7. We have heard both the parties, considered their submissions and perused the pleadings as well.

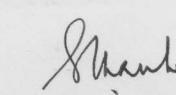
8. It is settled law that promotion to a selection post can be given only to such of the officers who are recommended by the duly considered DPC. It is also settled law by the



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Hon'ble Supreme Court that a person only has right of consideration. Once a person has been considered for promotion he cannot claim promotion as a matter of right, unless he has been recommended by the DPC. In this case the respondents have categorically stated that the applicant could not be promoted as he could not make the grade whereas persons junior to him were recommended because they did make the grading. The applicant has not alleged malafides against the member of the DPC. In any case the DPC was held at UPSC and we have no reason to doubt the correctness of recommendation made by DPC. For promotion to selection post, seniority cannot be made the basis as it has to be done on the basis of selection made on the basis of merit. If applicant did not make benchmark he cannot have any grievance nor can he claim promotion as a matter of right merely on the ground that his juniors have been promoted. It is also settled law that Courts cannot sit in appeal over recommendations made by the DPC. In this case since the DPC did not recommended the name of the applicant for promotion to the selection post the relief as claimed by the applicant cannot be given. Therefore, we find this case lacks merit. The same is accordingly dismissed.

9. There shall be no order as to costs.

  
Member A

  
Member J

/pc/