

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Original Application No.942 of 2002.

Allahabad this 8th the day of July 2004.

Hon'ble Mrs. Meera Chhibber, J.M.

Hon'ble Mr. S.C. Chaube, A.M.

H.N. Ram son of Late Sri Raja Ram
R/o M.M.-92 Surya Vihar Colony, Gorakhnath,
Gorakhpur.

.....Applicant.

(By Advocate : Sri O.P. Khare)

Versus.

1. The Comptroller and Auditor General of India
10, Bahadurshah Zafar Marg,
New Delhi.
2. The Principal Director of Audit,
North Eastern Railway, Gorakhpur.
3. H.S. Sinha, Audit Officer,
Office of the Principal Director Audit,
N.E.Railway, Gorakhpur.

.....Respondents.

(By Advocate : Sri S.C. Chaturvedi/
Sri K.P. Singh/
Sri P Mathur).

O R D E R

(By Hon'ble Mrs. Meera Chhibber, J.M)

By this O.A., applicant has sought the following
relief(s):

- "(i) This Tribunal be graciously pleased to quash the illegal and arbitrary order of promotion of respondent No.3 dated 10.03.1995 which su superseded the claim of the applicant without any cogent reasons.
- (ii) This Tribunal may quash the appellate order dated 4.3.2002 passed by the appellate authority without proper application of mind and against the provisions of law in an arbitrary manner.
- (iii) This Tribunal be graciously pleased to direct the respondent No.2 to reconsider for promotion as per provisions of Recruitment Rules 1989 against 66-2/3% post on seniority cum fitness basis on the post of Audit Officer retrospective from 10.03.1995 on notional basis.

S

- (iv) This Tribunal be pleased to direct the respondent No.2 to pay consequential benefits in terms of pay and allowances from 10.03.1995 to 31.07.1995 and retiral benefits as well, because the applicant was willing to work but was deprived to do so which affected his pensionary benefits as well.
- (v) This Tribunal may allow cost to the applicant because he was forced to file this second O.A. due to faulty disposal of appeal by the appellate authority vide order dated 1.6.95 and the order was marked confidential. The appeal has again been rejected in a cryptic manner giving cause to file this O.A again to seek justice by quashing the appellate order dated 4.3.2002. The whole exercise of the Appellate authority and the respondent No.2 is to harass the applicant".

2. The admitted fact in this case are that applicant was Senior ^{most} Assistant Audit Officer who was considered alongwith his juniors for promotion ^{as} Audit Officer by the D.P.C. which met on 12.02.1995. The vacancies were to be filled by non selection method in the category of 66 2/3%. The dispute has arisen because according to applicant all his A.C.Rs were good, he was never communicated any adverse remark or warning etc. while respondents have stated that his case was not recommended by the D.P.C. as his overall assessment did not show him fit for promotion. They have explained Shri M.S. Sinha was junior to applicant but he was promoted as his case was duly recommended by D.P.C. They have explained that seniority alone is not the criteria for promotion as service records of 5 years have also to be seen. They have further submitted that Court cannot sit in appeal ^{over} ~~over~~ D.P.C. recommendations as D.P.C. consists of senior officers viz the Principal Director of Audit and two Accountant Generals against whom no malafides have been alleged. His appeal has also been decided by a speaking order, therefore, the O.A. may be dismissed. They have submitted that applicant and Shri Sinha have since retired also in 1995 itself.

3. We had directed the respondent's counsel to produce

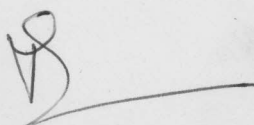
B

the D.P.C. proceedings as well as 05 years' A.C.Rs of applicant which were taken into consideration by the D.P.C. This order was passed on 13.05.2004 and reminder was also given to the counsel. It was only ^{on 8} 2nd July that respondents finally gave the DPC proceedings and ACR folders of applicant as well as respondent No.4. Perusal of the record shows that applicant was given censure on 1.10.1990 as applicant had pasted a poster on 15.5.1990 on the wall beneath the stairs which contained wild and base ~~less~~^R allegations against the Administration and the Head of Department, distorted facts regarding payment of transfer allowance and cash award etc, apart from using unparliamentary language and matters relating to Account Officers which do not come under the purview of Association.

4. Being aggrieved he filed appeal which too was rejected on 26.10.93. In the present O.A. applicant has not challenged the censure or the appellate order. This censure was given within 5 years as DPC had met on 17.2.1995 therefore Confidential Reports from 1989 to 1994 were looked into. There is no doubt that applicant was senior most person in the seniority list but it cannot be said that he had absolutely clean record as claimed by applicant.

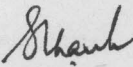
5. Persual of the DPC proceedings show that applicant's case was duly considered by the DPC who did not find him fit for promotion due to his service record. At this juncture it would be relevant to state that no body can claim promotion as a matter of right and one only has right of consideration. Since he was duly considered by DPC and was not found fit due to censure it calls for no interference because applicant has not alleged any malafides against the members of DPC and vs. it has been held by Hon'ble Supreme Court in the Case of SMT. NUTAN ARVIND VS. U.O.I. AND OTHERS reported in 1996(2) S. C. C. Page-488 that when

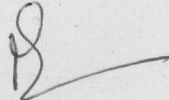
.....4/-



a high level committee had considered the respective merits of the candidates and considered their cases for promotion, the Supreme Court can not sit over the assessment made by the DPC as an appellate authority. The same view was reiterated in the case of Anil Katyar also.

6. It is thus clear that Tribunal cannot sit in appeal over the recommendations of DPC. Since no illegality is found in the proceedings of DPC, O.A. is dismissed with no order as to costs.


Member-A


Member-J

shukla/-