

(RESERVED)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 7th day of September, 2005

ORIGINAL APPLICATION NO. 1216 OF 2003

HON'BLE MR. MUZAFFAR HUSSAIN, MEMBER- J.
HON'BLE MR. S.C. CHAUBE, MEMBER- A.

Vinit Kumar Giri, P.A No. 36017-T,
Trade- Store Keeper, No. 17 Wing,]
Air Force Logistic Section,
Gorakhpur- 273002.Applicant

Counsel for the Applicant : Sri Naveen Kumar Giri

V E R S U S

1. Union of India through Secretary,
M/o Defence, New Delhi.
2. Deputy Director (DPC),
Air Head Quarter, Vayu Bhawan
New Delhi- 110001.
3. Central Air Command, Bamrauli,
Allahabad.
4. Air Force Commanding Officer,
Air Force Station, Gorakhpur.
5. Reporting Officer/Flight Lieutenant
then Sri M. Gupta, Logistic Section,
17, Wing, Air Force Station, Gorakhpur.....Respondents

Counsel for the respondents : Sri P.D. Tripathi.

O R D E R

BY HON'BLE MR. S.C. CHAUBE

The applicant has impugned order dt. 19.08.2003 of Air HQs, Vayu Bhawan New Delhi in respect of the applicant being annexure No. 5 and Annexure No. 1 to the original application .

The applicant, who was initially appointed on the post of Lower Division Clerk in the year 1987, was on conversion, posted as Assistant Store Keeper in the year 1993 . He is presently working as Store Keeper in the

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office Logistic Section, 17 Wing Air Force Station, Gorakhpur. He is entitled for promotion to the next promotional post of Store Superintendent in pay scale of Rs. 5000- 8000/-. It is claimed by the applicant that his performance as Store Keeper has been of very high quality having worked with due sincerity , honesty and hard work. Ever since 1997 when the applicant was promoted on the post of Store Keeper his work and conduct have been unblemished and no adverse remark has ever been communicated to the applicant prior to 29.08.2002. However, on 29.08.2002 an ambiguous and non speaking advisory remark was served on the applicant advising him need for improvement (Annexure A- 1).

2. The applicant made a representation dt. 13.09.2002 to the competent authority i.e. Commanding Officer, Air Force Station, Gorakhpur (Annexure A- 2). It was submitted by the applicant that he was never issued show cause notice about his performance and the ambiguous remark has been given by the officer is not within his jurisdiction. However , no decision or any reasoned or speaking order on the representation of the applicant has been given by the competent authority, who was required to decide the representation with a reasoned and speaking order within reasonable time, particularly within 6 months.

3. Meanwhile respondents prepared panel for promotion on the post of Store Superintendent from the post of Store Keeper. The juniors to the applicant have been placed on such panel but the name of the applicant illegally and

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arbitrarily has not been placed in the said panel. Applicant has cited specific instance of Sri B.C. Wajge.

4. The applicant further submitted representation dt. 30.07.2003 to Air Officer Commanding Air Station, Gorakhpur who sent it to the Air Head Quarters, New Delhi. The Air Head Quarters vide letter dt. 19.08.2003 informed the applicant that due to low grading in ACR the name of the applicant could not be placed on the panel prepared for the Store Superintendent (A- 5).

5. It has been contended by the applicant that the action of the respondent in non placing the name of the applicant in the panel dated 03.07.2003 for promotion to the post of Store Superintendent is wholly illegal, arbitrary and discriminatory and violative of Articles 14, 16 and 21 of the Constitution of India; that no description or reason has been communicated to the applicant as to what was lacking in him ; that the basis of awarding such advisory remark has not been communicated to the applicant; that the impugned remark for the period of 01.04.2001 to 31.03.2002 as contained in Annexure - 1 cannot be legally considered for the purposes of preparation of panel of promotion ; that inspite of his representation dt. 13.09.2002 and 31.07.2003 no reasoned or speaking order has been passed by the respondents for communication to the applicant; that the applicant has rendered excellent service on the post of Store Keeper for more than 5 years; that the reporting officer Sri M. Gupta was working and posted only for 4 months in the reported year and as such

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he was not authorized to give the assessment of the applicant for the entire period of the year under report etc.

6. The respondents on the other hand have contested the claim of unblemished service record of the applicant and have further stated that he was awarded punishment of CENSURE for absenting from duty without prior sanction. Secondly, the promotion to the grade of Store Superintendent is not automatic but considered by a duly constituted DPC at the Air HQs. By mere length of service the claim of the applicant for promotion is contrary to the norms of promotion to the post of Store Superintendent. The respondents have further stated that the applicant did not make any representation against the communication of the advisory remarks. Further the alleged representation dt. 13.02.02 is not available on the record and the applicant should be put to strict proof. Further the DPC after considering the ACRs of the applicant for the year 1997 - 1998 to 2001 to 2002 assessed the applicant as not yet fit. The ACR for the year 2001-2002 were adverse which were communicated to the applicant against which the applicant has not made any representation. Even other wise, the over all grading of the ACRs considered by the DPC was not sufficient to recommend the applicant for promotion . On the other hand the DPC considered and assessed Sri B. C. Wajge as "FIT" and accordingly his name was brought on the panel to the post of Store Superintendent. The recommendations of the DPC according to the respondents are in accordance with the rules and guide lines on the

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subject and there is no illegality or violation of any Article of Constitution of India. The respondents have further stated that number of months for making the entry in the ACR is three months. Thus the entry given by Sri M. Gupta can be considered being valid. Finally the respondents have contended that the applicant has not been able to establish any element of malafide or prejudice either on the part of the DPC or the reporting officer. Accordingly he is not entitled for any relief.

7. In the Rejoinder Affidavit the applicant has contested the claim of the respondents that he was awarded punishment of CENSURE for unauthorized absence from duty. However, he has been promoted on the post of Store Superintendent later on and thus punishment of CENSURE cannot be raised at a later stage.

8. We have heard the counsel for the parties and perused the pleadings.

9. Learned counsel for the applicant in support of his contentions has cited the Division Bench judgment of Allahabad High Court in Syed Waquar Ahmad Vs. State of UP & Ors 2003(1)UPLBEC 677 in which the petitioner was not considered because of adverse entries. However, in the peculiar facts and circumstances of the case it is established that the case of the applicant of the present OA was considered by the DPC ^{and} ~~who~~ ^{who} was however, not found fit for promotion. Thus the aforesaid judgment of Allahabad High Court will not be helpful to the applicant. The counsel for the

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applicant has then cited the case of Sukhdeo Vs. Commissioner, Amrawati Division and Anr. 1996 (5) SCC 103 wherein the Apex Court made following observation :

" It would be salutary that the controlling officer before writing adverse remark would give prior sufficient opportunity in writing by informing of the deficiency he noticed for improvement. In spite of the opportunity given if the officer/employee does not improve then it would be an obvious fact and would form material basis in support of the adverse remarks. It should also be mentioned that he had been given prior opportunity in writing for improvement and yet the same was not availed of so that it would form part of the record."

10. The applicant has challenged the validity of the award of adverse ACR and further stated that he was never issued any show cause notice about his performance by the reporting officer before recording the adverse remark. Secondly, the reporting officer Sri M. Gupta was posted only for 4 months in the year under report as such his assessment of only 4 months cannot be held to be valid for the entire year under report. A perusal of the relevant ACR recorded by Sri M. Gupta shows that the same was written by him in respect of the applicant for the period April, 2001 to 31st March, 2002. On the other hand the reply of the respondents to para 4 (xix) of the O.A as stated in para 17 of Counter Affidavit only mentions that the number of months to qualify for making the entries in the ACR is three months. In our opinion the stand taken by the respondent in para 17 of the CA is rather vague and evasive. They have not anywhere clarified as to what was the performance of the applicant for the remaining 8 months of the year. We are, therefore, of the considered view that

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assessment of a reporting officer who worked only for 4 months cannot be validly applicable to the entire assessment year of 2001-2002. It also not clear from the CA of the respondents as to whether any formal letter of caution or advise was communicated to the applicant about the deficiency that was noticed for improvement at the time of writing of ACR. If, however, in spite of the opportunity given to the applicant he did not show any improvement then it would form a valid basis in support of the adverse remarks. The respondents have not been able to establish any such material on record which would justify the adverse remark reported by the reporting officer.

11. The adherence to principles of natural justice as recognized by all civilized states is of supreme importance when any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as " Audi Alteram Partem" Rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise ^{clear} and ^{un}ambiguous. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of any such notice and reasonable opportunity the adverse remark awarded to the applicant becomes wholly vitiated. As observed in the celebrated case of Cooper Vs. Wandsworth Board of Works 2 (1863) 143 E.R 414, even God himself did not pass sentence upon Adam before he was called upon to make his defence.

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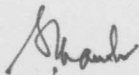
12. We are conscious of narrow scope of judicial review under the law of the land. The Hon'ble Supreme Court in a plethora of Decisions (Nutan Arvind Vs. U.O.I. & Ors., 1996 (2) SCC 488) (Durga Devi Vs. State of Himanchal Pradesh 1997(4) SCC 575) (State of M.P. Vs. Srikant Chapekar JT 1992(5) SC 633) (Dalpath Aba Saheb Solunke Vs. B.B. Mahajan AIR 1990 SC 434 and Smt. Anil Katiyar Vs. U.O.I. & Ors. 1997 (1) SLR 153) has held that the Courts and Tribunals are not expected to play the role of an appellate authority or an umpire in the acts and proceedings of the D.P.C. and certainly cannot sit in judgment over the selection made by the DPC unless the selection is vitiated by the malafide or on the ground of arbitrariness. Similarly the Tribunal cannot assume the power to judge the comparative merits of the candidates and consider the fitness or suitability for appointment. Nor it is the function of the courts to hear appeals over the decisions of the selection committee and to scrutinize the relative merits of the candidates. The only right the employee has, is a right of consideration. We observe that the said right of consideration of the applicant has not been infringed, in the instant case as the applicant has been duly considered by the DPC.

13. Be that as it may, it is amply established that the reporting officer who awarded advisory/adverse remarks to the applicant for the reporting year 2001-2002 was posted only for a period of 4 months. However, the DPC considered this assessment for the entire period of 12 months. In our considered view this is a major illegality which has affected the process of decision making of the DPC.

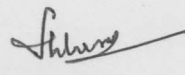
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Secondly, the respondents have not been able to establish or show any reliable material to suggest that the reporting officer before recording the advisory/adverse remarks had issued any communication of advice or caution for improvement of the applicant. This in our view is violation of cardinal principles of natural justice.

14. For aforesaid reason and case law the order dated 19.08.2003 of Air HQs, Vayu Bhawan, New Delhi is quashed in so far as it relates to the applicant. Respondent No. 2. i.e. Dy. Director (DPC), Air Headquarters, Vayu Bhawan, New Delhi is directed to arrange for Review meeting of DPC which shall consider the case of the applicant in the light of aforesaid observations within a period of 4 months from the date of communication of a copy of this order. The decision of the Review DPC shall be further communicated to the applicant within one month thereafter. We, however, make no order as to costs.



MEMBER- A.



MEMBER- J.

/ANAND/