

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 21st DAY OF Apr 2010)

PRESENT :

HON'BLE MR. A. K. GAUR, MEMBER - J

HON'BLE MR. S. N. SHUKLA, MEMBER-A

ORIGINAL APPLICATION NO.126 OF 2003

(U/s, 19 Administrative Tribunal Act.1985)

B.P. Ram, aged about 54 years, Son of Late Ram Kishan,
Resident of 1496-B, L.I.G., Avas Vikas No.3, Panki Road,
Kalyanpur, Kanpur Nagar.

.....Applicant

By Advocate : Shri N.K. Nair
Shri M.K. Upadhyay

Versus

1. Union of India, through the Secretary,
Ministry of Agriculture, Krishi-Bhawan,
Dr. Rajendra Prasad Marg, New Delhi-110001.
2. Director General,
Indian Council of Agricultural Research,
Krishi-Bhawan, Dr. Rajendra Prasad Marg,
New Delhi-110001.
3. The Director,
Indian Institute of Pulses Research (I.I.P.R.),
Kalyanpur, Kanpur.
4. Shri Anil Kumar Saxena,
Presently working on the post of Superintendent,
Indian Institute of Pulses Research,
Kalyanpur, Kanpur.

..... Respondents

By Advocate : Shri B.B. Sirohi

ORDER

DELIVERED BY MR. S. N. SHUKLA, MEMBER-A

This OA has been filed seeking the following reliefs:-

- "i) The respondent nos.1 to 3 be directed to formally got
expunged or to treat as redundant the adverse



remarks in the A.C.R. of the applicant for the periods 1995-96 and 1996-97 (up to 25.1.97) and to be of no adverse consequences to the applicant.

- ii) *The respondents nos. 1 to 3 be directed to revert the respondent no.4 as Assistant and as junior to the applicant on the Feeder post for further promotion in any Review D.P.C. or fresh D.P.C. for the post of Superintendent or Assistant Administrative Officer (A.A.O) and to permit the applicant to officiate as Superintendent as the senior most Assistant, pending such promotion.*
- iii) *The respondent Nos. 1 to 3 be directed to constitute a proper Review D.P.C. or fresh D.P.C. and to consider promotion of the applicant on the basis of the applicant's seniority, ignoring the illegal and mala fide adverse remarks of the ACRs of the years 1995-96 and 1996-97 (up to 25.1.1997).*

2. Briefly stated the facts of the case as pleaded are that the applicant joined as Junior Clerk in Indian Institute of Pulses Research (I.I.P.R.) Kanpur on 28.10.1978. After five years of service he became eligible for promotion as superintendent. On 31.1.1997 a vacancy of Superintendent arose on account of retirement of Shri R. A. Upadhyay the then superintendent. As per the seniority list of the Assistant dated 27.1.1997 the applicant was senior to respondent no.4. However, the respondent no.4 viz. Shri Anil Kumar Saxena was promoted as superintendent by superseding the applicant.

3. The applicant alleged that Shri Anil Kumar Saxena took advantage of his position in the organization and manipulated to get expunged the adverse remarks made against him in the Confidential report for the year 1994-95 by taking advantage of the administrative Officer and the Director who also belong to the same caste.

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4. The applicant was never communicated any adverse entry in any of his ACR's. He made a representation dated 3.2.2007 to the Director, against his supersession (Annexure A-11). No action having been taken on the said representation, yet another representation/appeal was addressed to the Director General, I.C.A.R., New Delhi who called for parawise comments of the Director I.P.P.R. Kanpur (Annexure A-13). Thereafter the applicant filed an OA No.492 of 2001. The said OA was disposed of by the Tribunal vide order dated 11.5.2001 Directing the Director General, I.C.A. R. New Delhi to decide the representation of the applicant by a reasoned and speaking order (Annexure A-14). Consequently, vide an order dated 27.11.1001 of I.C.A. R., New Delhi (Annexure A-14) the findings of the Competent Authority were communicated as under:-

- i). *It is noticed that the Reviewing Officer has commented upon fitness for promotion of Sh. B. P. Ram in his ACRs though this column had been deleted in the form of ACRs for Assistant and below. The format of ACT being followed in IIPR, Kanpur is not the one adopted by the Council.*
- ii). *For the period 1991-92, 92-93, 1993-94 the entries given under different columns on the performance of Sh. B. P. Ram range from good to very good. His report for 1994-95 also indicates about his above average/good performance. However, the reports for the subsequent periods 1995-96 and 1996-97 (upto 25.1.97) contain adverse entries. The adverse entries have not communicated to Sh. Ram and it is evident that the DPC has considered the ACRs without a decision on adverse entries and without giving an opportunity to the officer concerned to make a representation against the same. This in violation of instructions contained in the Government of India, DOPT O.M. No. 22011/3/88-Estt. (D) dated 11.5.1990.*

The post of Superintendent under ICAR institutes was a selection post and the DPC should have followed the principles prescribed in preparation of panel including grading of officers with reference to benchmark prescribed. However, in this case the minute of the DPC are not self-speaking and are also silent on its grading of officers



considered by it for promotion on the basis of benchmark prescribed.

As regards the departmental inquiry sought by Sh. B. P. Ram into his other complaints of harassment on caste grounds by the then Director, it is stated that these complaints have not been found substantiated by the IIPR. Further at this stage it will not be possible to probe these complaints given their nature and in the absence of any supporting evidence from Sh. B. P. Ram.

Keeping in view the above it has been decided with the approval of D.G., ICAR that IIPR Kanpur, may hold a Review DPC after communicating to Sh B. P. Ram the adverse entries of his ACRs to provide him an opportunity to represent against those entries and decision on his representation taken by the Competent Authority as per the prescribed procedure. The Review DPC should also not take cognisance of entries recorded in the Column 'Fitness for promotion' as at this stage rewriting of ACRs in the prescribed format is not possible.

5. Consequent to the directions given by I.C.A. R., New Delhi the adverse remarks in the ACR's for the period 1995-96 were communicated vide memorandum dated 20.12.2001. Another representation (Annexure A-16) dated 19.1.2002 was made to the competent authority through the Director, I.I.P.R. In a very detailed representation all grievances were taken up. Subsequently through a letter dated 20.12.2002 from the I.C.A.R., New Delhi representation of the applicant was dealt with and the decision of the competent authority was communicated as under: -

"I am to refer to Institute's letter No.3-4/92-Estt(part II)/6002 dated 31.8.2002 and to day that the representation dated 19.1.2002 from Sh. B.P. Ram, IIPR, Kanpur against the adverse entries in his ACRs for the period 1995-96 and 1996-97(up to 25th January, 1997) received from the IIPR has been examined as per the relevant rules on the subject. The Competent Authority in the ICAR has rejected the representation and directed to retain the adverse entries keeping in view the record made available by the IIPR indicating that no improvement could be noticed in his performance during the period despite the warnings issued to him. He may please be suitably informed of the decision of the Competent authority. The review DPC may consider the case of Sh. B.P. Ram accordingly. The following decisions have also been taken:-

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- (i) *the first ACR of Sh. B.P. Ram recorded for the period 1.4.1995 to 17.5.1996 may please be accepted for the period 1.4.1995 to 31.3.1996 only as the addition of the subsequent period by the IIPR, Kanpur is not as per norms; and*
- (ii) *a certificate may be placed in the dossier that the ACR of Sh. B.P. Ram for the period 1.4.1996 to 17.5.1996 be treated as unwritten.*

6. It is not clear from the pleadings as to what was the ultimate consequence of the Review DPC, held if any. However, from the order dated 4.6.2003 it seems that the OA was filed just before the DPC was to be held and accordingly following orders were passed on the question of interim relief: -

"Heard counsel for the parties on the question of interim relief. The interim relief is for direction to refrain the respondents holding any review D.P.C. or fresh DPC. We are not inclined to grant this relief. However, we provide that any promotion made thereafter shall be subject to the outcome of this OA."

7. To surmise briefly, the grounds taken by the applicant are as under:-

- (i) Delay in communication of the adverse entries up to five years was deliberate and motivated with an object of showing favour to respondent no.4.
- (ii) The order of the Tribunal in OA No.492 of 2001 was not considered in letter and spirit. Similarly detailed representation of the applicant dated 19.1.2002 was also not considered keeping in mind the grievances raised therein.
- (iii) Once the review DPC was ordered the Status-quo should have been maintained as it existed before promotion of respondent no.4 and that he should have been reverted.



- (iv) Before drawing up adverse entries in the ACRs it was imperative that the applicant should have been issued with memorandums, advisories, notices for making improvement etc. The respondent no.1,2 and 3 failed to keep in mind that the applicant belong to schedule caste and he was entitled to certain privileges, concessions and benefits.

8. In the counter affidavit, briefly the grievances raised by the applicant have been replied as under: -

- i) The retention of adverse remarks, to the extent specified, has been done by the competent authority after direction to eliminate and filter all acts of the I.I.P.R. Kanpur which were not in accordance with the law and procedure.
- ii) It is incorrect and wrong on the part of the applicant to make out as though superseded by Respondent No.4 only. The fact is that the DPC which met on 30.01.1997 considered all the three eligible Assistants for promotion to the post of Superintendent. While the applicant was found unfit for promotion, the other two eligible Assistants, were found suitable to be promoted. However, there was only one vacancy of superintendent, the senior most Assistant amongst the two found suitable by the DPC was promoted.

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- iii) Allegations of favoritism, Casteism and manipulation have all been considered by the competent authority and found to be unsubstantiated.
- iv) There is no rule that in the event of Review DPC the status-quo ante as it stood before the original DPC would be maintained and promoted candidate should be reverted.

9. In reply to the allegations that memorandums, warning and Cautions etc. were not issued, reference was invited to counter affidavit Annexure -1 being a detailed comments forwarded to the ICAR through I.I.P.R. Kanpur letter dated 22.2.2001.

10. It is incorrect that the Reporting Officer and the Reviewing Officers were of the same caste. Further the DPC was held in accordance with the composition conveyed by the I.A.C.R., New Delhi. The DPC did include a representative of schedule caste. The other members were an Administrative Officer who was included by virtue of his post and in accordance with the prescribed composition and, therefore, any allegations of ulterior motives are factually incorrect.

11. Reference was also invited to memorandums, replies and warnings etc. through a thick pile of documents consisting of more than 62 pages as (Annexure No. NIL) to the counter affidavit. Specific attention was invited to page 23, 26,30,31,39,49,55,66 and 67 wherein the applicant has expressed regret for his

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misconduct and assurance for improvement. Other pages relate to memorandums calling for explanation, warnings and cautions etc.

12. Rejoinder affidavit has been filed reiterating the contents of the OA. Significant, through a supplementary affidavit dated 7.6.2007 it was placed on record that the applicant has taken compulsory retirement on his own during the pendency of the aforesaid OA and the same has been accepted vide order dated 27.1.2006 w.e.f. 01.01.2007.

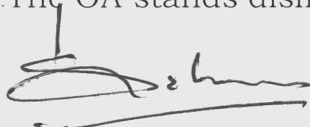
13. Heard learned counsel for the parties and perused the pleadings. Having carefully considered the rival contentions particularly the annexures to the counter affidavit there is no doubt left that the applicant was a habitual and incorrigible offender and even after being cautioned and warned time and again he apparently showed no improvement in his conduct. The authorities have considered these aspects and found it appropriate to retain the relevant adverse entries, wherever made, as per rules. The authorities also directed the I.I.P.R. to hold a Review DPC after communicating and allowing an opportunity to represents against the adverse remarks. It is against this order to hold a review DPC the applicant has come before this Tribunal.

14. We have also found that the allegations of discrimination on the ground of caste have been considered by the authorities and have been found to be ill founded.



15. We, therefore, do not find any convincing reasons to grant reliefs as claimed by the applicant.

16. The OA stands dismissed. No Costs.



Member-A



Member-J

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