

RESERVED ON 03.07.2013

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ALLAHABAD this the 23rd day of July 2013.

HON'BLE MR. JUSTICE S.S. TIWARI, MEMBER -J
HON'BLE MS. JAYATI CHANDRA, MEMBER -A

ORIGINAL APPLICATION NO. 1113 OF 2006

Abhijit Banik, aged about 40 years, son of XDr. G.B. Banik, R/o 6/2 Patel Road, Shahjahanpur.

By Advocate :Shri R.C. Pathak

.....Applicant

V E R S U S

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Director General/Chairman, Ordnance Factory Board, 10-A, Shaheed Khudiram, Ram Bose Road, Kolkata-700 001.
3. The General Manager, Ordnance Clothing Factory, Shahjahanpur (U.P)

By Advocate: Shri D.N Mishra

.....Respondents

O R D E R

Delivered by: HON'BLE MS. JAYATI CHANDRA, MEMBER -A

By means of present O.A. filed under Section 19 of Administrative Tribunals Act 1985, the applicant seeks following relief(s):-

- (i) Issue suitable order or direction by way of certiorari quashing the impugned orders dated 29.08.2006, 20.7.2006, 1.9.2006, 27.06.2001, 15.12.2001 and 9.8.2002 shown as Annexure No. A-1 to A-6 to this Original Application.
- (ii) Issue suitable order or direction by way of mandamus to the respondents expunging the adverse remarks and improving the grading of ACR's to Very Good for the 2000-2001 and 2001-2002 if any given by the respondents

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and turned down the same for considering the same promotion in the pay scale of Rs.14300-400-18300 to the post of Joint General Manager since the said promotion five ACR's of 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005 are to be considered without any reason. Reviewing Officer had given very good remarks in the ACR's for the year 2000-2001 and 2001-2002 and the accepting officer had turned down ACR's with his own adverse ACR remarks without any reasons and against rules as shown in Annexure No. A-7 to this O.A

- (iii) Issue suitable order or direction by way of mandamus to the respondent NO.2 to place the applicant above to his juniors in the promotion in pay scale Rs.14300-400-18300 order dated 20.7.2006 along with upgrading the ACR's of applicant and placing the applicant above his juniors by ordering immediate review DPC for the applicant with all consequential benefits (promotion pay scales, and payments of arrears including 18% penal interest).
- (iv) Issue suitable order or direction by way of mandamus to the respondent NO.2 to place all the applicant ACR's specially ACR's for the year 2000-2001 and 2001-2002 to verify the veracity of facts on the matter of aforesaid ACR's.
- (v) Issue suitable order or direction by way of mandamus to the respondents that one post be kept vacant for the applicant for the promotion of Jt. G.M the pay scale of Rs.14300-400-18300.
- (vi)
- (vii)
- (viii)

2. The facts of the case as narrated by the applicant are that he joined as Assistant Works Manager in Ordnance Equipment Factory, Kanpur in the year 1994 and on 21.03.1997 he was promoted as Works Manager in senior time scale of Rs.3000-4500. He was served with the memo on 27.06.2001 (Annexure A-4) with the adverse remarks for the period of 1.4.2000 to 31.3.2001. He submitted his representation to the respondent No.2 against the adverse remarks communicated to him for the period of 1.4.2000 to 31.3.2001. Respondent NO.2 rejected the representation

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of the applicant on 05.12.2001 (Annexure A-5). On 9.8.2002, respondent NO.2 again issued a memorandum for adverse ACR's for the period of 1.4.2001 to 31.3.2002 (Annexure A-6). Respondent No.2 issued seniority list (Annexure A-3) of IOFS Officers on 01.01.2006 in the pay scale of Rs.10,000-325-15200 in which he was placed at Sl. No.36. However, respondent No.2 issued promotion order dated 20.7.2006 (Annexure A-2) in which certain persons junior to him were promoted to the higher pay scale of 14300-400-18300 and were designated as Jt. GM. On 21.7.2006, applicant made representation to the respondent No. 2 against his non-inclusion in panel of promotion. Respondent No.2 illegally and arbitrarily issued order by rejecting the claim of the applicant for promotion on the post of Jt. General Manager in the pay scale of Rs.14000-400-18300. Hence the O.A.

3. He has challenged the conclusion of the DPC on the basis that the DPC considered 5 years ACR i.e. from the period 2000-2001 and 2004-2005. Although in the ACR of 2000-2001, the review officer had given very good remarks, accepting authority had turned down the same and recorded his own adverse entries, which is against rules as per O.M No.22011/5/86 Estt. (D) dated

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20.6.1989 and corrigendum dated 13.07.1989. He has further stated that the 2 adverse ACRs were given to him without prior warning and are underserved.

4. The respondents have stated that the actual grievance of the applicant is against the promotion order dated 20.7.2006. However, the basis of such an order i.e. his non-inclusion in the promotion list arises from the 2 adverse entries earned by him in the year 2000-2001 and 2001-2002. Any remedial action on these 2 entries has now become highly time barred. By linking the order dated 27.6.2001 (Annexure A-4) by which adverse ACR for 2000-2001 was communicated to him and by order dated 5.12.2001 (Annexure A-5) his representation against the adverse entry was rejected by the Competent Authority and order dated 9.8.2002 (Annexure A-6) by which adverse entry for 2001-2002 was communicated to him to the promotion order, he has sought to circumvent the limitation clause under the Central Administrative Tribunal Act.

5. There is also the preliminary objection of not exhausting all the alternative remedies available against an adverse entry. He was given 2 adverse entries one for 2000-2001 and the second one for 2001-2002. Against

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the adverse entries dated 27.06.2001, applicant submitted a representation. After full consideration of the representation of the applicant, respondents rejected the representation of the applicant. In accordance with Government of India instruction DP & AR, OM No.21011/1/77-Estt. dated 30.1.1978, the applicant should have submitted a memorial against the rejection of representation within six months but he did not submit any memorial. Thus the ACR for the period 2000-2001 assumed finality.

6. Against the 2nd adverse entry for the period 2001-2002 he did not prefer any representation. Non representation against the said communication proves genuineness of the communication.

7. The second technical objection raised by the respondents is one of limitation under section 21 of Central Administrative Tribunal Act, 1985. Respondents have submitted that if applicant was aggrieved against the rejection of his representation on the adverse entries for the year 2000-2001, he could have been filed O.A. within the prescribed period but applicant has woken up after a gap of more than 5 years and as per Rule he cannot ^{T. U.} ~~be~~ agitated after a lapse of more than 5 years.

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8. Learned counsel for the respondents have placed reliance on the following judgments:-

“(i) *Paramu Vs. Union of India and Ors* reported in (1986) ATC 514 (para 5), in which Hon’ble Court has held:-

“Where a final order has been made by the Government or a Competent Authority, rejecting the application or representation authorized by the relevant service rules, for the redressal of his grievance- the application to the Tribunal under section 19 shall be barred unless made within 1 year from the date of such final order of the Government or other competent authority”.

(ii) *Mohd. Khalil Vs. UOI* (1997) SLJ (CAT) 54. Hon’ble Apex Court has laid down the following:-

“No application shall be admitted by the Tribunal unless it is made within a year from the date on which the final order had been given”.

(iii) Hon’ble Apex Court in *Bhagmal Vs. UOI* (1997) 2 SLJ (CAT) 543 has held that “Delay cannot be condoned unless sufficient grounds are shown”.

9. Since adverse entries in the ACRs for 2000-2001 and 2001-2002 had become final, the DPC (Departmental Promotion Committee) in its assessment did not find the applicant FIT for the promotion.

10. Rejoinder and supplementary counter affidavits have been filed and the same points have been reiterated as have been pleaded in the OA and CA.

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11. We have heard the counsels for the parties and perused the records.

12. The applicant's specific relief is against the promotion order dated 20.7.2006 as communicated to him by order dated 29.8.2006. The applicant has himself admitted that DPC based on its recommendation on the ACRs of the persons of a period of 5 years i.e. 2000-2001 to 2005-2006. There is no allegation that his name was not considered in accordance with his seniority as being in the zone of consideration. There is no allegation against any kind of illegality in the proceeding of DPC or its constitution. A close reading of the relevant portion of the guidelines issued by Government of India in its OM No. 22011/5/86-Estt. (D) dated 20.06.1989 and corrigendum dated 13.7.1989 in Rule 6.2.1, provides that:-

"(f) If the Reviewing Authority or the Accepting Authority, as the case may be, has overruled the Reporting Officer or the Reviewing Authority, as the case may be, the remarks of the latter authority should be taken as the final remarks for the purposes of assessment, provided it is apparent from the relevant entries that the higher authority has come to a different assessment consciously after due application of mind. If the remarks of the Reporting Officer, Reviewing Authority and Accepting Authority are complementary to each other and one does not have the effect of overruling the other, then the remarks should be read together and the final assessment made by the DPC".

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13. By his own admission, it is said that he was given adverse entry in the year 2000-2001, although according to his statement, the adverse entry was that of Reviewing Authority. In terms of para 6.2.1 (f) (quoted above), the orders of Higher Authority has to be accepted as final unless it is expunged.

14. In this case, the adverse ACRs were communicated to him within the stipulated time period by the respondents in its letter dated 27.6.2001 (Annexure A-4). Against first adverse entry, he gave his representation, which was turned down. He took no action against thereafter. Therefore, it is deemed that ACRs have become final. Against 2nd adverse entry, he took no remedial action, therefore, that too became final. At this stage, he cannot seek to reopen the case for expunging of adverse entry through this OA filed against his promotion order.

15. Rule 10 of Central Administrative Tribunal (Procedure) Rules, 1987 says :-

"10. Plural remedies – An application shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another".

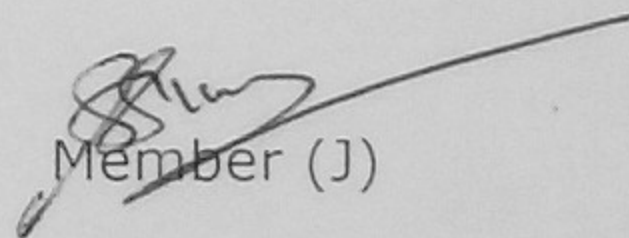
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16. In the first relief, the applicant has sought to quash the promotion orders and thereby relief (ii), he has sought to expunge the adverse remarks and improve his grading. In this case, promotion is based on ACRs recorded. The recording of ACRs is an annual and continuous process whereas a promotion is a periodic activity. Right of course of action for the applicant was to have sought is to represent against the adverse entries long before the promotion case was taken up. He had been given full opportunity to do so. These adverse entries were not withheld from him nor they did not suddenly surface at the time of promotion. Therefore, relief against these ACRs is not the automatic outcome of promotion but the promotion is the outcome of adverse ACRs. In so far as the relief against ACRs is concerned, the same is highly time barred.

17. On the basis of discussion above, there is no merit in this case. O.A. is dismissed. No costs.



Member (A)



Member (J)

Manish/-