

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

**HON'BLE MR.A.K. GAUR , MEMBER (J).
HON'BLE MR. D. C. LAKHA, MEMBER (A).**

Original Application Number. 534 OF 2006.

ALLAHABAD this the 27 day of 11, 2009.

Vinit Kumar Giri, S/o late Sri K.N. Giri, Permanent Address R/o Village
and Post Office- Piarauta, Police Station- Reoti, District- Ballia.

.....Applicant.

VERSUS

1. Union of India through the Secretary, Ministry of Defence, Govt. of India, New Delhi.
2. Air Officer Commanding in-Chief Head Quarter C.A.C, IAF Air Force Station, Bamrauli, Allahabad.
3. Air Officer Commanding Air Force Station, Gorakhpur.
4. Deputy Director (DPC), Air Head Quarters, Bayu Bhawan, New Delhi.

.....Respondents

Advocate for the applicant: Sri Bashist Tiwari

Advocate for the Respondents : Sri Saurav Srivastava

ORDER

(Delivered by Hon'ble Mr. A.K. Gaur, J.M)

While dictating the judgment, we noticed that the date of impugned order in several paragraphs of original applicant including relief clause has been mentioned as '27.12.2005', which, as per Annexure A-I of O.A is '27.12.2005'. Accordingly we called Sri B. Tiwari, learned counsel for the applicant to make necessary correction, as pointed by us. Learned counsel for the applicant appeared in my Chamber and submitted that it is a typographical mistake. On our

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permissions, he made necessary correction in the Relief Clause as well as in other paragraphs, wherever it was wrongly mentioned.

2. By this Original Application filed under section 19 of Administrative Tribunals Act, 1985, the applicant has prayed for following main relief/s: -

"i). to issue an order or direction setting aside the order dated 8.12.2005 alongwith order dated 27.12.2005 issued by the respondents,

iii). to issue order or direction commanding the respondents to give promotional benefits in scale of Rs. 5000-8000/- as Store Superintendent w.e.f. 15.1.2004 with proper fixation of pay increments and all benefits of seniority alongwith arrear of salary to the applicant,

c). to issue an order or direction commanding the respondents to give proper benefit in with to his junior Mr. D.C. Bage who was next junior from the applicant."

3. The factual matrix of the case are that the applicant was initially appointed on the post of Lower Division Clerk in the year 1987 (now Assistant Store Keeper since 1993) and in due course was promoted to the post of Store Keeper in pay scale Rs. 4000-6000 w.e.f. 01.10.1997. According to the applicant, after completion of 5 years service as Store Keeper, he is entitled to be promoted to the post of Store Superintendent in pay scale of Rs. 5000-8000/-. The grievance of the applicant is that despite unblemished and satisfactory service, the respondents vide order dated 29.08.2002 communicated him adverse remark made in the ACR. Against the said order, the applicant preferred representation dated

13.09.2002/Annexure-3 of O.A but the respondents did not pay any heed to the same.

4. In the meanwhile, a DPC was held for preparation of a panel for promotion to the post of Store Superintendent from the post of Store Keeper, in which, according to the applicant, juniors to the applicant were placed and he was not included therein despite that fact that the name of the applicant in seniority list dated 20.03.2001 is shown at Sl. No. 248 whereas the name of Sri D.C. Wajge is shown at Sl. No. 249. While preparing the panel dated 03.07.2003, the DPC after considering the ACRs of the applicant for the year 1997-98, 1998-99, 1999-2000, 2000-01 and 2001-02 assessed him as 'Not Yet Fit' (para 6 of judgment dated 07.09.2005/Annexure-5 of O.A).

(Underlined to lay emphasis)

5. Aggrieved the applicant preferred representation dated 31.07.2003. The applicant vide order dated 19.08.2003 was informed that due to low grading in ACR, his name could not be placed in the panel dated 03.07.2003. The applicant filed O.A No. 1216/2003 challenging the order dated 19.08.2003.

6. The said Original Application was decided by the Tribunal vide judgment and order dated 07.09.2005/Annexure-5 of O.A with direction to the Dy. Director (DPC), Air Headquarter (respondent No. 3) to arrange for Review meeting of DPC which shall consider the case of the applicant in the light of observation made in the said order. According to the applicant, the respondents in compliance of the direction contained in judgment dated 07.09.2005, passed order dated 08.12.2005 and

27.12.2005 /Annexure -2 and 1 of O.A respectively regarding Review D.P.C for promotion to the grade of Store Superintendent for the year 2003-2004 to 2005-2006 and rejected the claim of the applicant on the ground of being 'Not Yet Fit' . Aggrieved the applicant filed present O.A on the ground that average grading/remarks are not adverse remarks in the eyes of law and on the basis of said average remarks, promotional right of the employee cannot be denied. In support of his contention, learned counsel for the applicant placed reliance on a decision of Hon'ble Supreme Court reported in **AIR 1990 (Supreme Court) 2055 - R.P. Mehrotra Vs. Chief Commissioner, Income Tax, Patiyala.**

7. Learned counsel for the applicant submitted that while considering the case of the applicant in Review D.P.C, the respondents also did not take into account the letter dated 28.11.2002 issued by the Government of India/Annexure-9 of O.A according to which , the average grade/entry may not create an impediment in unless there are other grounds to treat the employee unfit. Learned counsel for the applicant further submitted that the respondents had totally misconstrued the letter dated 10.04.1989 issued by the DOPT while considering the case of the applicant in Review D.P.C.

8. Learned counsel for the applicant would contend that while considering the case of the applicant in Review DPC , as per order dated 08.12.2005/Annexure A-2 of O.A as well as order dated 27.12.2005/Annexure A-1 of O.A, the respondents reconsidered the case of the applicant for promotion to the post of Store Superintendent for the year 2003-2004 to 2005-2006, whereas the grievance of the applicant was against the DPC held for preparation of panel dated 03.07.2003,

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which was subject matter of challenge in O.A No. 1216/2003 and the said panel was quashed with respect to the applicant only and respondents were direct to arrange Review D.P.C to consider his case. Thus the case of the applicant ought to have been reconsidered by holding Review D.P.C in reference to the DPC held for preparation of panel dated 03.07.2003.

9. On notice, the respondents have filed Counter Affidavit. Learned counsel for the respondents submitted that in compliance of the direction of the Tribunal, the 'adverse remarks' awarded to the applicant in his ACR for the year 2001-2002 were expunged and 'adverse remarks' awarded in the ACR for the year 2003-2004 were also treated as 'expunged' and not taken into account by the Review D.P.C. The Review DPC assessed the applicant on the basis of ACRs of five years preceding the Departmental Promotion Committee years and in view of 'over all low grading' he was found 'Not Yet Fit' for promotion. Learned counsel for the respondents further submitted that Sri D.C. Wage was assessed by the DPC as 'FIT', therefore, his name was placed in the panel for promotion to the post of Store Superintendent.

10. Learned counsel for the respondents placed before us the proceedings of the Review D.P.C for considering the case of the applicant for promotion to the post of Store Superintendent and submitted that the Review DPC assessed him 'Not Yet Fit' for the years 2003-2004 to 2005-2006 in view of over all low grading in his ACRs of five years preceding and in terms of DPC guidelines for non-selection post as contained in para 6.1.4 and 7 of DOPT O.M. No. 22011/5/86-Estt(D) dated 10.04.1989. Learned counsel for the respondents further submitted that

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the applicant was subsequently recommended for promotion by the DPC for the year 2006-2007 and has already been promoted to the post of Store Superintendent w.e.f. 12.04.2006.

11. Learned counsel for the applicant has filed Rejoinder Affidavit rebutting the contentions of the respondents. In para 8 of the Rejoinder Affidavit, it has been stated that once the adverse remarks were expunged for the year 2001-2002 and 2002-2003, nothing remains adverse against the applicant. Learned counsel for the applicant submitted that earlier department had taken into consideration ACRs for the year 1998-2003 when panel was prepared on 03.07.2003 but subsequently when Review D.P.C was convened, A.C.R has been considered for the year 2001-2005. It has further been submitted that when the applicant was given promotion on 12.04.2006 (Annexure -1 of R.A) ACR was considered for the year 2001-2005 and applicant was given promotion as such.

(Underlined to lay emphasis)

12. Learned counsel for the applicant further submitted that Tribunal vide 07.09.2005/Annexure-5 of O.A directed to reconsider the case of the applicant for panel dated 03.07.2003 but the respondents had considered the case of the applicant for the year 2003-2004 and 2005-2006 and rejected the claim of the applicant being found 'Not Yet Fit' vide order dated 08.12.2005 but on the contrary the applicant had been given promotion on the post of Store Superintendent in the pay scale of Rs. 5000-8000 vide order dated 12.04.2006 though no additional material was available with the respondents, which were considered on 08.12.2005, when the case of the applicant was rejected.

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13. We have heard learned counsel for both sides and perused the pleadings as well as the Written Arguments filed by the either sides.

14. A bare perusal of the judgment and order dated 07.09.2005/Annexure A-5 of O.A clearly indicates that the impugned order dated 19.08.2003 (Annexure A-4) was quashed and set aside. The relevant para 2 of order dated 19.08.2003 is being reproduced herein under: -

"2. The under mentioned Store Keepers were considered for promotion to the grade to Store Superintendent by the duly Departmental Promotion Committee. But the individuals were assessed not yet fit due to low grading in their ACRs.",

15. Para 14 of the judgment dated 07.09.2005 is also being reproduced herein under: -

"For aforesaid reasons and case law the order dated 19.08.2003 of Air H.Qs, Vayu Bhawan, New Delhi is quashed in so far as it relates to the applicant. Respondent No. 2 i.e. Dy. Director (DPC), Air Headquarter, 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."

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16. Having gone through the order dated 27.12.2005/Annexure A-1 and order dated 08.12.2005/Annexure A-2, we find that although the adverse remarks in the ACR for the year 2001-2002 have been expunged but considered the case of the applicant for promotion to the grade of Store Superintendent for the years 2003-2004 and 2005-2006 by convening Review D.P.C , whereas the grievance of the applicant is against the panel dated 03.07.2003, which was prepared for promotion to the post of Store Superintendent from the post of Store Keeper, in which the DPC after considering the ACRs of the applicant for the year 1997-98, 1998-99, 1999-2000, 2000-01 and 2001-02 assessed him as 'Not Yet Fit'. During the course of arguments, learned counsel for the applicant place before us the certified copies of Review DPC convened to consider the case of the applicant for the year 2003-2004 to 2005-2006 but they failed to produce the documents showing that whether the Review D.P.C was convened in reference to the DPC convened for preparation of panel dated 03.07.2003, validity of which was the subject matter of challenge in O.A No. 1216/2003 through impugned order dated 19.08.2003 and same was quashed and set aside.

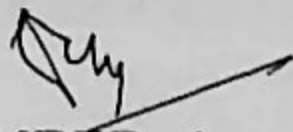
17. In view of the observation made above, we find substance in the arguments advanced by the learned counsel for the applicant. Accordingly the O.A is partly allowed moulding the relief of the applicant with following direction: -

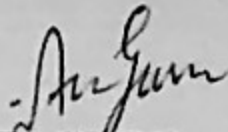
“Deputy Director (DPC), Air Head Quarters, Bayu Bhawan, New Delhi/respondent No. 3 is directed to convene a Review D.P.C within a period of three months from the date of communication of this order, which shall consider the case of the applicant in reference to the panel

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dated 03.07.2003 for which the DPC after considering the ACRs of the applicant for the year 1997-98, 1998-99, 1999-2000, 2000-01 and 2001-02 assessed him as 'Not Yet Fit', in accordance with law by a reasoned and speaking order and communicate the decision to the applicant within 2 weeks thereafter."

18. There will be no order as to costs.


MEMBER- A.


MEMBER- J.

/Anand/