

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
BENCH, ALLAHABAD

(This the 19<sup>th</sup> Day Of October, 2011)

Hon'ble Mr. Sanjeev Kaushik-JM  
Hon'ble Mr. Shashi Prakash - AM

Original Application No. 597 of 2006  
(U/S 19, Administrative Tribunal Act, 1985)

Akhilesh Kumar Dwivedi, aged about 41 years, Son of Shri Binda  
Prasad Dwivedi, R/o Q. No.21/8, Golf Course Colony, Cantt.  
Kanpur.

..... Applicant

By Advocate: Shri R.K. Shukla

Versus

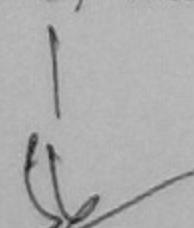
1. Union of India through the Secretary, Ministry of Defency,  
Dept. Of Defence Production & Supplies, New Delhi-11.
2. The Addl. D.G.O.F., Ordnance Equipment Fys. Group HQrs.,  
Ayudh Upaskar Bhawan, G.R. Road, Kanpur.
3. The General Manager, Ordnance Equipment Factory, Kanpur.

..... Respondents

By Advocate: Shri Anil Dwivedi

ORDER

By way of this instant OA filed under Section 19 of the A.T.  
Act, 1985 the applicant impugned the order dated 26.10.2005  
(Annexure A-I) by which the applicant has not been granted first



financial up-gradation w.e.f. 09.08.1999 and the order dated 09.07.2005 (Annexure A-II).

**2.** The sole contention raised by the counsel for the applicant is that while considering the case of the applicant for grant of first ACP, the respondents have not adhered to the procedure laid down for grant of ACP. He argue that while considering the case of the applicant the respondents have taken in account only the ACR for the year 1988 - 89, whereas they requires to consider last five years available ACRs. Therefore, the action of the respondents in rejecting the claim of the applicant for grant of Ist ACP is illegal and arbitrary. Subsequently, the respondents have considered the case of the applicant on 29.07.2002 and granted him benefit w.e.f. 30.07.2002. Counsel for the applicant further referred to the instruction issued by the Government of India for grant of ACP Scheme to the Central Government Civil Employees dated 09<sup>th</sup> August 1999

**3.** On the other hand, Shri Anil Dwivedi, counsel for the respondents vehemently argued that the case of the applicant was considered and the applicant was not found fit for grant of first ACP, therefore, the same was not granted to him earlier.

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Subsequently case was reconsidered and he was granted ACP on 30.07.2002. He also referred to averments made in Para-12 of the Counter Affidavit.

4. We have considered the rival submission and have gone through the record. By the impugned order, the case of the applicant has been rejected by the respondents solely on the ground that applicant was not having up to mark ACR and his case was not considered by DPC for grant of ACP w.e.f. 09.08.1999 and subsequently when DPC was held on 29.07.2002 the benefit was granted to him. Relevant paragraph of the order is reproduced hereunder:-

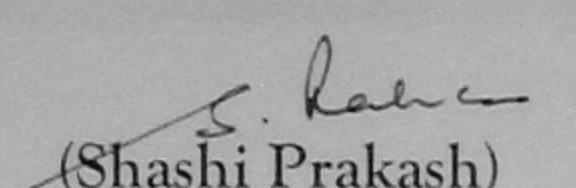
"h. During the service period of 18 and ½ years penalty was imposed on you of withholding of penalty for a period of one year without cumulative effect vide order No.Vig/D-50/16/AKD/85 dated 04/09/2000 for the misconduct of: 1) Sleeping while on duty. 2) Leaving section without permission. 3) Lack of devotion to duty and were issued with recorded warning on two occasions i.e. 1) For the misconduct of missing from place of duty without permission vide Order No. Vig./D-53/Vividh dated 01/09/1988 and 2) For the misconduct of Negligence of duty vide Order No. Vig./D/53/Vividh dated 05/03/2001. Your Probationary Period was also extended 04 times due to your unsatisfactory work and performance on the post of LDC besides performance as reflected in your ACR during the year 1998-99 and 1999-2000 was Average. Therefore, DPC held on 28/02/2002 after assessing performance from ACRs and Record of service did not find you suitable for granting you financial up-gradation under ACP-I wef 09/08/1999. Therefore, you were disallowed the said benefit wef 09/08/1999.

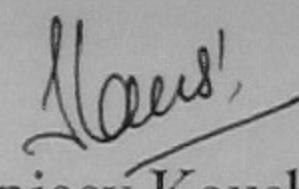
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Subsequent DPC held on 29/07/2002, recommended your case finding Fit for the same. Accordingly the same was allowed to you wef 30/07/2002 from the date of subsequent meeting of DPC/Screening Committee. ”

5. We have also perused the minutes of the DPC meeting and found that when the first time case was considered, the name of the applicant was ~~find~~ placed at Sl.No. 7 and only for the year 19~~8~~8 - 99 ACR was considered, where the applicant was awarded “Average” and he was declared ‘unfit’. Subsequently, on 29.07.2002 again DPC was conducted, wherein the case of the applicant was reconsidered in which four ACRs of the applicant was considered i.e. 1998-99, 1999-2000, 2000-01 and also for the year 2001-02 and on the basis of the same, the applicant was found fit for grant of first ACP. Accordingly, the benefit was granted to the applicant on 30.07.2002. It is nowhere stated that the DPC is to be constituted for grant of ACP as the ACP is to be granted only by way of length of service i.e to be granted after completion of 12/24 years service, if the applicant, otherwise <sup>has</sup> ~~not~~ under gone departmental proceeding. The ACP is granted in lieu of non grant of promotion / stagnation. Admittedly, there was no proceeding pending against the applicant when the first DPC meeting was held. Therefore, we deemed it appropriate that the impugned order passed by respondents is liable to be set aside.

6. Accordingly, the O.A. is allowed. The impugned order dated 26.10.205 passed by the respondent is set aside and matter is remitted back to the respondents to reconsider the case of the applicant in accordance with the Rule. If the applicant found <sup>may be</sup> suitable then benefit granted to him. No costs.

  
(Shashi Prakash)  
Member-A

  
(Sanjeev Kaushik)  
Member-J

Sushil