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In the Central Administrative Tribunal
Jodhpur Bench, Jodhpur

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Date of Order : 24.07.2001

1. O.A.No. 43/1998
2. M.A.No. 25/2000 (OA No.43/98)

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Ashok Kumar Gupta S/o Shri Ram Babu Gupta aged about 35 years, R/o C/o Archaeological Survey of India, Station Road, Jaisalmer, at present employed on the post of Conservation Assistant Gd.II in the office of Archaeological Survey of India, Station Road, Jaisalmer.

..... Applicant.

Versus

1. Union of India through Secretary to Govt. of India, Ministry of Art and Culture, Department of Archaeological Survey of India, New Delhi.

Director General, Archaeological Survey of India, Janpath, New Delhi.

Director Administration, Archaeological Survey of India, Janpath, New Delhi.

..... Respondents.

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CORAM :

HON'BLE MR.JUSTICE B.S.RAIKOTE, VICE CHAIRMAN
HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

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Mr. J.K.Kaushik, Counsel for the applicant.

Mr. Vineet Mathur, Counsel the respondents.

Mr. R.C.Shukla, Departmental Representative also present for the respondents.

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ORDER

PER MR.A.P.NAGRATH :

After recommendations of the departmental promotion committee, the applicant alongwith some others were ordered



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to be promoted to the post of Conservation Assistant Grade-I in the pay scale of Rs. 1400-2300 vide order dated 29.1.96. In partial modification of this order, another order dated 3.7.96 (Annex.A/1) was issued whereby promotion of the applicant was kept in abeyance till further orders. Being aggrieved with this order the applicant has come before us with the prayer that the impugned order dated 3.7.96, Annex. A/1, be quashed and the applicant be allowed his due promotion and all consequential benefits at par with his next junior.

2. A Misc. Application 25/200 has been filed by the applicant with the prayer that the respondents be directed to produce the ACR Dossier of the applicant and DPC proceeding for perusal of the Tribunal. When the matter was taken-up for admission, the learned counsel for the respondents placed before us the DPC proceedings and the ACR Dossier of the applicant. In that view the prayer made in the M.A. becomes infructuous. The M.A. is, therefore, disposed of as having become infructuous.

3. The main ground on which the respondents claimed to have kept the applicant's order of promotion in abeyance is that when his case was taken up by the DPC in 1996, his ACR Dossiers for last three years were not before the DPC and the DPC declared him fit for promotion without considering the complete record. Another fact which came in the way of the applicant's promotion was ^{that} at the relevant time, he was undergoing a punishment of stoppage of an increment for one year. This punishment was effective from 1.3.95 and was to be over on 29.2.96. Since the punishment was current on the date the order of promotion was issued, the respondents

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claim that the applicant could not have been promoted because of currency of the punishment. The learned counsel for the respondents has stated that the case of the applicant was taken up again by the DPC in 1998 and he was declared fit by that DPC. The learned counsel for the applicant, on the other hand, while admitting that the applicant could not be promoted during the currency of the punishment, contended that as soon as the punishment period was over, the applicant should have been promoted and that there was no need for his name to be considered by DPC in 1998.

4. We have perused the DPC Proceedings and the ACR Dossiers of the applicant. We find that while declaring the applicant fit for promotion in 1996 DPC was aware that his ACRs for the period 1992-93, 1993-94 and 1994-95 were not available. Such a situation was not only in the case of the applicant, as we find from the records produced before us but in some other cases also ACRs for some of the years were not before the DPC. Based on whatever information and the ACRs made available to the DPC, the DPC recommended the applicant and some others for promotion. Again in the DPC held in the year 1998 the case of the applicant was considered. We find from the record that there is a noting that applicant's case was in the sealed cover dated 9.10.93 and that his promotion order was kept in abeyance on the basis of the DPC held on 4.1.96.

5. We have perused the Minutes of the DPC held on 18.2.98 and find that the case of the applicant was taken up for review. The sealed cover of 1993 was opened and the applicant was found fit. The Committee also has recorded that the applicant could not be promoted on the basis of



the DPC held on 4.1.96 due to non availability of ACRs for the period 1992-93, 1993-94 and 1994-95 and that he was under the period of penalty as on 4.1.1996. It is further mentioned that the DPC decided that since Shri A.K.Gupta(applicant) was under the period of penalty during January, 1996 and his ACRs for the aforesaid period were average and reported adversely, his promotion on the basis of DPC held on 4.1.96 was found null and void.

6. We have given our anxious consideration to the records of this case and the minutes of the DPC. The departmental promotion committee is only a recommendatory body and we find it surprising to observe that in this case the DPC recorded a decision that since Shri Gupta was under the period of penalty and his ACRs for the relevant years were average he could not be promoted on the basis of the DPC held on 4.1.96. We consider this action of the DPC as totally beyond its jurisdiction. The learned counsel for the respondents could not provide to us any explanation as to under what authority the DPC could take a decision of this nature. In fact while adverting to the minutes of the DPC held on 4.1.96 we find that the ACRs in many other cases were not before the DPC and in some cases the rating of the ACRs are below that of the applicant. Even such others were declared fit though they were lower in rating in some of the ACRs. The applicant and others were considered fit for promotion on the basis of over-all assessment made by the Committee held on 4.1.96. There is no rule that a subsequent DPC would negate the recommendations of the earlier DPC. We have also not been shown any decision taken by any of the competent authority wherein such an authority directed to put up/case

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of the applicant before the DPC in 1998, for a review. The facts of the case in hand do not provide any justification for putting up the case of the applicant for review. While the action of the respondents is not giving effect to the promotion orders issued in January 1996 during the currency of a punishment on the applicant is understandable but to put up the case once again for review, in our view, is beyond jurisdiction. As per the impugned order, the promotion order was only kept in abeyance and should have taken effect as soon as the period of punishment was over. Since the period of punishment imposed on the applicant was over on 29.2.1996, the order of promotion dated 29.1.96 should have been given effect to immediately thereafter. In view of the facts and circumstances of this case, the prayer of the applicant is liable to be accepted.

7. We dispose of this O.A. at the stage of admission by allowing the same and by directing the respondents to give effect to the promotion order dated 29.1.1996 (Annex. A/2) of the applicant as Conservation Assistant Grade-I on and from 1.3.1996. The applicant shall also be entitled to all the consequential benefits. This order shall be complied with within a period of one month of receipt of the order.

8. No order as to costs.

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(A.P.NAGRATH)
Adm.Member

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(B.S.RAIKOTE)
Vice Chairman

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Part II and III destroyed
in my presence on 16.5.07
under the supervision of
section officer (1) as per
order dated 13.3.07

M.G.N.
Section Officer (Record)

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C. 2000*