

11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR
.....

Date of order : 23.3.2001

Original Application No. 31/99

A.P.Bhandari S/o Shri N.K.Bhandari, aged about 52 years,
R/o C/o House No. 54, Jawahar Colony, Sardar Club, Jodhpur
at present employed on the post of Assistant Defence Estate
Officer, 61, Old Public Park, Umed Club Road, Jodhpur.

... Applicant.

Versus

1. Union of India through Secretary to the Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Director General, Defence Estate (Adm),, Ministry of Defence, West Block IV, R.K. Puram, New Delhi. 110 066.
3. R.K.Kapur, ADEO, C/o Director, General, Defence Estate, Min. of Defence., West Block IV, R.K.Puram, New Delhi 110066.
4. Shri Jayant Pal, ADEO C/o Director General, Defence Estate, Min. of Defence, West Block IV, R.K.Puram, New Delhi 110 066.
5. Shri S.N.Banerjee, ADEO, C/o Asstt. Defence Estate Officer, Baramulla (J&K).

... Respondents.

...

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

Mr. Kuldeep Mathur, Advocate Brief Holder for
Mr. Ravi Bhansali, Counsel for the respondents 1 and 2.

None is present on behalf of the respondents No. 3 to 5.

...

du



CORAM :

HON'BLE MR .A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR .GOPAL SINGH, ADMINISTRATIVE MEMBER

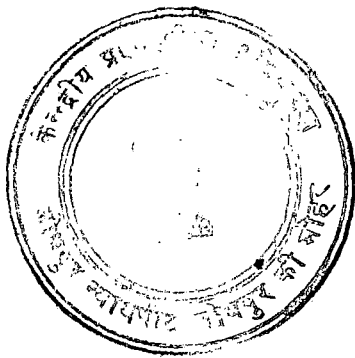
.....

ORDER

PER HON'BLE MR .A.K.MISRA :

The Applicant had filed this Original Application with the following prayer :-

"That the respondents No. 1 and 2 may be directed to produce the DPC proceeding held for the post of ADEO in the year 1989 along with the details of the vacancies and further directed to consider the case of applicant for promotion according to the yearwise vacancies as per his turn and to assign seniority to him above the respondents No. 3 to 5, and the impugned seniority list may be ordered to be modified accordingly and the applicant allowed all the consequential benefits."



2. Notice of the O.A. was given to the respondents who have filed their reply. It is stated by the respondents that the candidature of the applicant was considered for the promotional post of Assistant Defence Estate Officer in the year 1989 but he was not found suitable by the D.P.C. and therefore, the persons who were found place in the panel were promoted. Subsequently, in the year 1993, the candidature of the applicant was again considered by the D.P.C. and he was promoted to the post in question as per the recommendation of the D.P.C. Hence, the case of the applicant is without substance and deserves to be dismissed.

3. We have heard the learned counsel for the parties and have gone through the case file.

gm

4. Earlier, the applicant had filed an O.A. challenging the seniority list issued by the respondents on 1.3.94, Annex.A/1, which is also challenged in the present case. It was the contention of the applicant in the earlier OA ^{been} that few of his juniors have shown senior in the gradation list dated 1.3.94. Considering the earlier OA, this Tribunal concluded thus :-

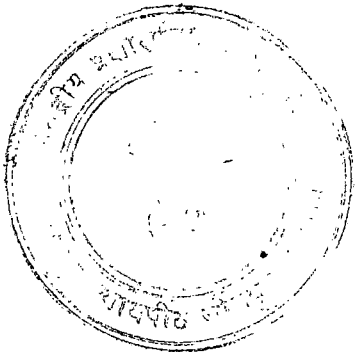


"4. In the circumstances, we dispose of this application with a direction to respondent No.1 to decide the applicant's representation Annexure A/9 dated 13.4.1994 within four months from the date of receipt of a copy of this order through a detailed speaking order on merits. Applicant may file a fresh O.A. in case he is aggrieved by any decision taken on the representation. Let a copy of the O.A. and the annexures thereto be sent to the respondent No. 1 alongwith a copy of this order."

5. In pursuance of the above direction, the representation of the applicant was considered by the respondents and was disposed of vide order dated 23.11.98 (Annex.R/1) in which it is clearly stated that the candidature of the applicant was considered by the D.P.C. in the year 1989. He having not been found suitable by the D.P.C. for promotion, his name was not recommended by empanelling his name for promotion. It is borne-out from the facts of the case that after the applicant and few others were promoted to the next higher grade the seniority list Annex.A/1 came to be issued by the respondents in which the name of the candidates have been shown as per the date of their promotion on regular basis against the regular vacancies. Therefore, those who were promoted as per the recommendation of the D.P.C. in the year 1989 found higher place and those who were recommended by the

for

D.P.C. in the year 1993 and promoted, found the lower place in the seniority list. It is also borne-out from the record of the case and as per the seniority list , Annex.A/1 ^{that} the earlier D.P.C. ^{held} was in the year 1985 and there was no D.P.C. between 1985 to 1989. There was a D.P.C. in the year 1989 and there was no D.P.C. between 1989 to 1993. However, the applicant was in consideration zone in the year 1989 and was duly considered. He was left-out not having been recommended by the D.P.C. Again he was considered in the year 1993 as he was within the consideration zone and was found fit to be empanelled and ~~has~~ been promoted.

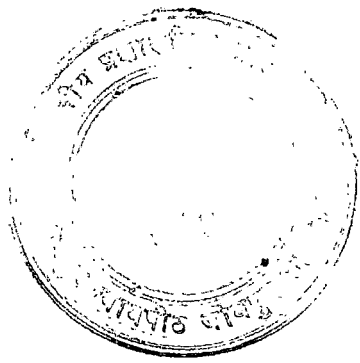


6. The applicant has challenged that the respondents should have identified year-wise vacancies and should have considered candidates for promotion year-wise. Since the respondents have not done so, therefore, the earlier D.P.C. of the year 1989 was not as per rules and the action taken by the department consequent to the D.P.C's recommendation cannot be termed as according to rules.

7. We have given our thoughtful consideration. Nothing is borne-out from the record that by not identifying year-wise vacancies and holding regular DPC the applicant had been prejudiced. All what is essential is that the candidature of any prospective candidate should not be left out of consideration. In the instant case, the candidature of the applicant as and when he came within the consideration zone was considered. This is another aspect that he was not found fit by the D.P.C. for promotion. Needless to

2m

say that larger the number of vacancies larger is the consideration zone. If for consideration of number of vacancies arising during previous years a D.P.C. is constituted then naturally, the consideration zone is also enlarged in the same proportion. It may just be possible that had there been a couple of vacancies of the earlier years the applicant might not have been within the consideration zone even in those earlier years. In our opinion, no prejudice can be said to have occasioned to the applicant in the given circumstances of the case, more specially when he was considered and not found suitable.



8. Although, the applicant had prayed for summoning of the D.P.C. record but in view of the specific statement of the respondents that the candidature of the applicant was considered by the D.P.C. in the year 1989 it was not thought desirable by us to summon the D.P.C. Record. At the cost of repetition, we may say that the candidate can raise his grievance only as against non-consideration by the D.P.C. which is not the case here. It is not for us to re-evaluate the marks given by the D.P.C. and the benchmark fixed by the departmental rules. In view of this, the proceedings of the D.P.C. were not required to be summoned or considered by us, specially when the candidature of the applicant was considered by the D.P.C.

9. As per the facts narrated above, we are of the opinion that the applicant has no case. The O.A. deserves to be dismissed and is, therefore, dismissed. No orders as to cost.

(Signature)
(GOPAL SINGH)
Adm. Member

(Signature)
(A.K. MISRA)
Judl. Member

....

Part on
Bm
Gen. 3.9.07

R/COD
a. 24
S. A.

Part II and IN destroyed
in my presence on 26.3.07
under the supervision of
section officer (J) as per
order dated 19.2.07

Section officer (Records)