

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR

.....  
Date of Order : 21.2.01

O.A.NO. 138/2001

S.C.Gairola S/o Late Shri Teeka Prasad Gairola, aged about 59 years, Resident of C/o Shri Mahendra Gehlot, Mahamandir Road, Jodhpur (Rajasthan), presently working on the post of Store Keeper in the Office of Divisional Organiser, Rajasthan and Gujarat Division, Special Service Bureau, Bhadwasia Road, Jodhpur (Rajasthan)

.....Applicant.

versus

1. Union of India through the Secretary, Ministry of Home Affairs, Government of India, North Block, Room No. 121, New Delhi.

2. Area Organiser (S), Office of Divisional Organiser, Rajasthan and Gujarat, Special Service Bureau (SSB), Bhadwasia Road, Jodhpur (Rajasthan).

.....Respondents.

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CORAM :

Hon'ble Mr. Justice O.P.Garg, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

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Mr. S.K.Malik, counsel for the applicant.

Mr. S.K.Vyas, Counsel for the respondents.

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ORDER

Per Hon'ble Mr. Gopal Singh :

In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant, S.C.Gairola, has prayed for quashing the impugned order dated 26.2.2001 (Annex.A/1) and for a direction to the respondents to consider the case of the applicant for financial up- gradation under the Assured Career Progression (for

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short 'ACP'), Scheme for II Up-gradation w.e.f. 9.8.1999 and a further direction to the respondents to pay arrears of pay and allowances along with interest w.e.f. 9.8.1999 till the date of payment.

2. Applicant's case is that he was initially appointed on the post of Lower Division Clerk (for short 'LDC'), w.e.f. 1.7.1970. He was promoted as Store Keeper in the scale Rs. 330-560 w.e.f. 16.2.1975. He is continuing on the post of Store Keeper since then. In terms of the Recommendations of the V Central Pay Commission, the Government of India had introduced a scheme called as Assured Career Progression Scheme w.e.f. 9.8.1999. This Scheme provided financial up-gradation after twelve and twenty four years of service in case where there was no promotion. It is the case of the applicant that he was promoted as Store Keeper in 1975 and thereafter, he has not been granted any promotion and under the ACP Scheme, he is entitled to II promotion w.e.f. 9.8.1999. The applicant represented his case to the respondents but the same was rejected on the ground that he was not found fit/eligible for the same. Hence, this application.

3. In the counter, it has been stated by the respondents that Shri S.C. Gairola, was found guilty for serious discrepancies and was penalised along with ~~some~~ others under order dated 31.1.1995. It has further been stated by the respondents that applicant's case for financial upgradation was considered by the Departmental Promotion Committee (DPC) but, he was not found fit in view of the below average record in the Annual Confidential Report (ACR) for the year 1994-95. In the subsequent DPC held on 23.2.2001 the case of the applicant was again considered but he was not found eligible due to adverse remarks in the ACR for the year 1999-2000. It has, therefore, been urged by the respondents that applicant has no case and the O.A. is liable to be dismissed.

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4. We have heard the learned counsel for the parties and perused the record of the case carefully.

5. The learned counsel for the applicant heavily relies upon Condition No. 15 for grant of benefits under the ACP Scheme and contends that the applicant had completed 24 years of service in the year 1994 and he should have been granted the benefit directly. He also submits that there was nothing adverse against the applicant earlier to 1994 when he became eligible for grant of financial upgradation under the ACP Scheme. As such, the applicant would be entitled to financial upgradation, notwithstanding adverse remarks in his ACRs subsequently. Here, it is pointed out that the Scheme came into existence in the year 1999 and it was not implemented retrospectively. Thus, for extending the benefits under the Scheme, the screening committee was expected to go through the service record as on the date of implementation of the Scheme i.e. 9.8.1999. Undoubtedly, the applicant had by then two ACRs where adverse remarks were recorded and, therefore, the DPC did not consider him fit for financial upgradation.

6. The learned counsel for the applicant has cited the following judgements in support of his contention :-

- (1) AIR 1988 SC 1033 - Raghunath Prasad Singh Versus Secretary, Home (Police) Department, Government of Bihar and Others and
- (2) 1982 (3) SLR 36 - Daleep Singh Versus State of Rajasthan and Others.

In Raghunath Prasad's case, Hon'ble the Supreme has held that reasonable promotional opportunities should be available in every wing of public service. In the instant case, since there was no promotional prospectus for the post of Store Keeper, the Government of India has implemented the ACP Scheme as recommended by the V

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Central Pay Commission. This Scheme provides for financial upgradation to the next higher scale and the applicant's case has been considered twice for financial upgradation but, he has not been found fit for the same. Before promotion/upgradation to the next higher scale, a person has to be fit for promotion/upgradation but the DPC did not find him fit for financial upgradation. Thus, the judgement cited by the learned counsel for the applicant does not help him.

The other judgement (Daleep Singh Vs. State of Rajasthan and Others) cited by the learned counsel for the applicant deals with a case where promotions for the period earlier to 1968 were being considered by the DPC and the DPC considered the confidential reports of the applicants for the period subsequent to 1968. Since the ACRs of the petitioner therein for the period subsequent to 1968 were adverse, they were not selected. In these circumstances, it was held by Hon'ble the Rajasthan High Court that the selection committee could not look into the reports recorded subsequent to the year 1967 to adjudge their suitability for promotion prior to 1968. This is a case of promotion whereas, the case in hand is that of financial upgradation and can not be equated with promotion. Moreover, the ACP Scheme came into existence only in the year 1999 and it was not retrospectively implemented. Thus, the screening committee was in its right to consider the up-to date confidential reports of the applicant to judge his suitability for the financial upgradation under the Scheme. The action of the screening committee, thus, cannot be faulted. In these circumstances, we are firmly of the view that this application is devoid of any merit and deserves to be dismissed.

7. The Original Application is accordingly dismissed with no order as to costs.

(Gopal Singh)  
(Gopal Singh)  
Adm. Member

(Justice O.P.Garg)  
(Justice O.P.Garg)  
Vice Chairman

Part II and III destroyed  
in my presence on 3/27/07  
under the supervision of  
Section Officer (as per  
order dated 1/15/07)  
Section Officer (Record)

6/2  
9/13  
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