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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

Original Application No. 269/2003

Date of order: 06.08.2007

CORAM:

**HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN.
HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER.**

Prakash Chandra Sharma, S/o Bhanwar Lal Ji, U.D.C., 6 F.O.D.,
C/o 56 A.P.O., R/o Maha Mandir, Adarsh Colony, Mau Sagar,
Jodhpur.

...Applicant.

Ms. Suman Porwal, proxy counsel for
Mr. A.S. Rathore, counsel for applicant.

VERSUS

1. Union of India through the Secretary to the Government, the
Ministry of Defence, New Delhi.
2. Director General of Ordnance Services, Master General of
Ordnance Branch, Army H.Q., DHQ, New Delhi.
3. Colonel Records & Commanding Officer, Army Ordnance Corps
Records, Trimulgherry P.O. Secunderabad.
4. The Commandant, 6 Field Ordnance Depot, C/o 56 APO.

...Respondents.

Mr. Vinit Mathur, counsel for respondents.

ORDER

Per Hon'ble Mr. Tarsem Lal, Administrative Member.

The applicant, Mr. Prakash Chandra Sharma, has filed this
Original Application asking for the relief that the respondents
may be directed to consider the candidature of the applicant for
promotion to the post of U.D.C. w.e.f. 01.01.1985 and grant
him promotion accordingly with all consequential benefits with
interest on the arrears of salary @ 18% per annum.

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2. The applicant has filed detailed Original Application explaining that he was appointed as L.D.C. in 6 FOD C/o 56 APO with effect from 16.08.1973 and was made permanent from 16.08.1975. On 03.03.1978, the applicant was served with a charge sheet and on conclusion of the inquiry, the Disciplinary Authority awarded the penalty. On making an appeal to the Appellate Authority, the Appellate Authority ordered that the inquiry to be conducted *de novo*. The Appellate Authority also passed an order on 16.12.1982 for reinstating the individual without deciding the period of removal from service from 29.09.1981 to 15.12.1982.

3. In pursuance of the orders passed by the Appellate Authority, the second round of inquiry was conducted as a result of which the Disciplinary Authority had awarded the punishment of compulsory retirement vide its order dated 13.10.1987. Aggrieved by the punishment order of compulsory retirement, the applicant sent an appeal dated 26.11.1987 to the Appellate Authority which was rejected.

4. Subsequently, the applicant filed an Original Application No. 506/1988 which was allowed by this Bench of the Tribunal vide order dated 27.01.1994 (Annexure A/1).

5. In compliance of the orders passed by this Bench of the Tribunal, the Brigadier Officer Incharge, Army Ordnance Corps Records Office, Secunderabad extended the following reliefs to

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the applicant:-

"(a) The period of suspension and compulsory retirement was treated to be as on duty.

(b) the period of suspension and compulsory retirement was treated to be qualifying service for earned leave.

(c) The full pay and allowances for the period of suspension to which applicant would have been entitled had he not been suspended from service less subsistence allowances already paid to him were made admissible from 29.09.1981 to 12.10.1987.

(d) Full payment allowances to which he would have been entitled from 13.10.1987 to 01.05.1994 had he not been compulsorily retired from service were made admissible.

(e) The period of suspension and compulsory retirement was treated / counted as qualifying service and;

(f) it was granted that interruption in service on account of compulsory retirement from service would not entail forfeiture of past service."

6. The applicant has explained that he was completely exonerated of all the charges and the Officer Incharge, A.O.C. Records, Secunderabad ordered that the applicant will be entitled for all the consequential benefits. Therefore, he was entitled for promotion to the U.D.C. cadre from the date from which his juniors have been promoted. The applicant served a notice for demand of justice dated 05.06.1997 (Annexure A/3). In response to which, the applicant was informed that his case was considered by the D.P.C.s from May 1994 to November 1996 and said D.P.C. had not recommended him for promotion to the post of U.D.C. He was also informed vide letter dated 27.02.1998 (Annexure A/4), that his appeal dated 05.06.1997 has also been

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examined by the Army Headquarters and rejected the same.

7. The applicant has further pleaded that his juniors namely Mr. L.C. Sharma and Mr. SLS Bhagasara have been promoted since 01.01.1985. Besides, Mr. A.S. Rathore who was similarly placed was promoted w.e.f. 01.01.1997 and subsequently he was granted antedated promotion w.e.f. 01.02.1984. The Commandant 6 FOD recommended to the Army Headquarters vide his DO letter dated 16.05.1998 (Annexure A/6) and subsequent DO letter dated 13.12.2000 (Annexure A/7) that promotion of Mr. P.C. Sharma may be considered by the DPC as his juniors have since been promoted. Army Headquarters intimated vide their letter dated 18.05.2002 (Annexure A/12) that the case of Mr. P.C. Sharma has been considered in the annual DPC during the year 2001 but the applicant was not Fit/recommended by the DPC, due to lacking of ACR criteria in terms of Para 6.1.4 of CPRO 26/90.

8. The applicant was granted promotion to the post of U.D.C. w.e.f. 01.01.2003 vide order dated 05th December, 2002 (Annexure A/14), whereas he has claimed that he was entitled for promotion to the post of U.D.C. with effect from the date his juniors have been granted promotion i.e. w.e.f. 01.01.1985. Against the above order dated 05th December, 2002, the applicant made a representation dated 18th December 2002 (Annexure A/15) addressed to the AOC

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(Records), Secunderabad requesting him to grant the promotion to the post of U.D.C. with effect from the date his juniors have been promoted. In response to the above, the Officer Incharge, AOC Records, Secunderabad informed vide its letter dated 05th August 2003 (Annexure A/18) that the case of the applicant for promotion w.e.f. 01.01.1985 was examined by the DPC and the DPC found that he was lacking ACR criteria at that time and even in the subsequent DPC right from May 1994 he was not found fit for promotion. Finally, he was found fit by the DPC held during September 2002 and he has rightly been promoted w.e.f. 01.01.2003.



9. The applicant has explained that while quashing the orders of compulsory retirement of the applicant, this Tribunal has specifically directed that the applicant shall be entitled to get all consequential benefits on account of setting aside of the order. In view of this, the respondents were under obligation to consider the candidature of the applicant for promotion on the post of U.D.C. with effect from the date his juniors were promoted.

10. The applicant also explained that the post of U.D.C. is a non selection post and as per criteria for promotion prevalent at the relevant time where promotions are to be made on non selection basis according to the Recruitment Rules, the DPC need not make a comparative assessment of the records and they should categories the officers as "fit" or "not fit" for

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promotion on the basis of assessment of their records of service. The applicant has stated that it transpires from different communications that the applicant's case has not even been considered for promotion on the post of U.D.C. with effect from the date 01.01.1985 while persons junior to him were promoted on the post. He has, therefore, requested that various orders issued vide order dated 18.05.2002 (Annexure A/12), order dated 30.05.2002 (Annexure A/13), order dated 27.02.1998 (Annexure A/4) and order dated 05.08.2003 (Annexure A/18) may be quashed and set aside and a direction may be given for consideration the candidature of the applicant for promotion as asked for in para one above.

11. On the contrary, the respondents have filed a detailed reply to the Original Application and pleaded that the request made by the applicant vide his application dated 18.12.2002 for granting antedating promotion has been rejected, as on his reinstatement into service, all the DPCs which were held from May 1994 onwards did not recommend his case for promotion based on his ACRs.

12. The respondents have explained that juniors of the applicant namely Mr. L.C. Sharma and Mr. SLS Bhagasare were promoted w.e.f. 01.01.1985 in their own turn based on seniority. The applicant was removed from service w.e.f. 29.09.1981, therefore, the name of the applicant did not

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figure in the DPC held during December 1984 for consideration of his promotion to the post of U.D.C. The case of applicant has not been considered in view of the fact that his ACRs for the year 1981, 1982 and 1983 were not available (during DPC Dec. 1984 ACRs for these years were considered in all other individual cases) and even if his case is considered with available ACRs the DPC would not have assessed him 'Fit' for promotion. The details of his ACRs for the year 1978 to 1980 are given below: -

(a) **ACR for the year 1978:** Adverse remarks of Part II, Col. 8 and 9 of Part III and Col 2(2) of Part IV (NOT YET FIT) have been communicated to the individual.

(b) **ACR for the year 1979:** Average ACR

(c) **ACR for the year 1980:** Adverse remarks against Col. 3.4(a), 4(b), 4(c), 6,7 and 10 of Part III and Col 2 (a) of Part IV (NOT YET FIT) have been communicated to the individual on 16.04.1981.



13. That immediately on reinstatement of the applicant, his case was included for considering him for promotion to the post of UDC w.e.f. 01.01.1985 the date from when his juniors in the post of LDC have been promoted to the post of UDC by Review DPC in May 1994 and he was found 'Not Yet Fit'. His case has been considered by all subsequent DPCs and his name has not figured in the panel for promotion due to lacking of ACR criteria. The applicant's case was recommended by the DPC during September, 2002 and he has correctly been promoted to the post of UDC w.e.f. 01.01.2003. The applicant is not eligible for promotion w.e.f.

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01.01.1985 in view of the recommendation/assessment of review DPC held in May 1994.

14. That the claim of the applicant giving him the consequential benefits does not mean that he will be given promotion in toto. The promotion will have to be as per recommendations of the DPC based on the assessment of the ACRs. The applicant is misleading the Court saying that no adverse remarks have ever been communicated to him.



15. The respondents have further explained that guidelines for the DPC for civilian personnel have clearly laid down that while 'average' may not be taken as adverse remark in respect of an officer, at the same time, it cannot be regarded as complementary to the officer, as 'average' performance should be regarded as routine and undistinguished. The performance which is above average is only noteworthy for giving rewards of promotion.

16. The respondents has submitted that relief sought by the applicant lacks substance and is devoid of merits and therefore, the O.A. may be dismissed with costs.

17. The applicant has also filed rejoinder wherein most of the pleadings already given in the Original Application have been reiterated.

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18. The rival contentions of both the parties have been heard and record perused.

19. The learned counsel for the applicant reiterated all the arguments in this O.A and made us to traverse through various documents. She pleaded that the applicant was given the punishment of compulsory retirement which was set aside by this Tribunal and the Tribunal also ordered for giving all the consequential benefits. Therefore, applicant is entitled for promotion with effect from the date his juniors have been given promotion i.e. from 01.01.1985. The learned counsel for the applicant pointed out that the applicant has earned 'average' ACRs which are not considered adverse for the purpose of promotion.



20. The learned counsel for the respondents reiterated all the arguments given in his reply to the Original Application and explained that Original Application filed by the applicant is devoid of merits and the same may be dismissed by this Tribunal.

21. We have considered this case very carefully and find that during the year 1976 to 1980, ACRs of the applicant have been graded as Average except for the year 1976 which has been graded as High. But the applicant has been graded on the basis of overall performance as 'Not Yet Fit for promotion' during the year 1976, 1978 and 1980 (statement enclosed with Annexure R/1).

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22. During the year from 1994 to 1997 and 2000 & 2001, he has been graded as 'Not Yet Fit' on the basis of his overall performance. It is only during the year 2002, he has been assessed/graded as 'fit' for promotion on the basis of his overall performance. Therefore, he has been promoted w.e.f. 01.01.2003.

23. It is further seen that the case of Mr. P.C. Sharma for his antedating promotion was taken up by the AOC Records, Secunderabad vide Annex. A/6 and A/7. Army Headquarters informed Commandant 6 FOD vide their letter dated 18.05.2002 as under:

".... However, the case of said named individual has also been processed in annual DPC during Nov 2001 but he was not Fit/recommended by DPC, due to lacking of ACR criteria in terms of Para 6.1.4 of CPRQ 26/90."

24. Army Headquarters further informed vide their letter dated 05th August, 2003 (Annexure A/18) as under:-

"2. Case of No. 6959045 LDC (Now UDC) Shri PC Sharma for consideration of his UDC promotion wef 01 Jan 1985 on his re-instatement into service has been examined and found that he was lacking ACR criteria at that time and even in subsequent DPCs.

3. His case was processed in all the DPCs held right from May 1994 onwards and in none of the DPCs found fit for promotion.

4. Finally he was found fit by the DPC held during Sep 2002 and rightly given promotion wef 01 Jan 2003.

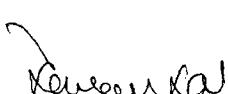
5. Since his case had already been examined by all the DPCs and he was not fit for promotion due to lacking ACR criteria, there is no point in re-processing his case in the DPC...."

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25. In view of the above discussion, it is clear that the case of Mr. P.C. Sharma, for antedating his promotion w.e.f. 01.01.1985 has been considered by the D.P.C. from time to time but he has not been found fit for promotion by the DPC on the basis of his overall records. He has consistently been graded as 'Not Yet Fit' during the year 1976, 1978 and 1980, 1994 to 1997 and 2000 to 2001. His performance has been considered consistently as undistinguished and 'Not Yet Fit for Promotion', therefore, this Tribunal would not like to interfere with the orders already passed by the respondents.

26. The Original Application is, therefore, dismissed, No order as to costs.


[Tarsem Lal]
Administrative Member
[Kuldip Singh]
Vice Chairman
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Recd. Copy of Judgment
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Part II and III destroyed
in my presence on 24-6-04
under the supervision of
section officer () as per
order dated 26-5-04

Section officer (Record)