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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION . No. 258/2006

Date of decision : 31st December.2007

Hon'ble Mr. N.D. Raghavan, Vice Chairman.

Hon'ble Mr. Tarsem Lal, Administrative Member.

Ashan Ali, S/o Shri G.F. Panwar, aged 36 years by caste Muslim r/o presently Indira Colony, Opposite New Masjid, Bikaner, Distt. Bikaner [Rajasthan] presently working on the post of Supporting Staff Gr. I at Central Sheep and Wool Research Institute, Bikaner, Distt. Bikaner, [Rajasthan]

:Applicant.

Rep. By Mr. S.K. Malik : Counsel for the applicant.

VERSUS

1. The Secretary, Indian Council of Agricultural Research, Krishi Bhawan, New Delhi.
2. The Director, Central Sheep & Wool Research Institute, Avika Nagar, Malpura, District Tonk, Rajasthan
3. Senior Administrative Officer, Central Sheep & Wool Research Institute, Avika Nagar, Malpura, District Tonk, Rajasthan
4. The Head, Central Sheep & Wool Research Institute, Bikaner, Distt. Bikaner [Rajasthan]
5. Shri Sri Ram Bana T-1(Driver/Lab. Technician) in Category-I, Central Sheep & Wool Research Institute, Bikaner, Distt. Bikaner [Rajasthan]

: Respondents.

Rep. By Mr. V.S. Gurjar : Counsel for respondents 1 to 4

None present for R.5

ORDER

Per Mr. Tarsem Lal, Administrative Member.

Mr. Ashan Ali has filed this O.A seeking the following reliefs:

- (a) By an appropriate order, writ or direction, impugned orders dated 17.11.2005 (annex. A/1) passed by respondent No. 3 be



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declared illegal and be quashed and set aside as if the same was never passed against the applicant.

- (b) By an appropriate order, writ or direction, official respondents may be directed to consider and promote the applicant to the post of T-1 (lab-Tech) in Category-1 w.e.f. 01.11.2002 i.e. the date from which his junior i.e. respondent No. 5 was promoted with all consequential benefits including the arrears of pay and allowances along with interest @ 9% P.A.

2. The brief facts of the case as culled out from the O.A. are that the applicant was appointed on the post of Supporting Staff Gr. I on 24.05.1993 and respondent No. 5 was appointed on the same post on 21.09.1994. A seniority list dated May 1996 of Supporting Staff Gr. I as on 31.03.1996 was published (Annex. A/2) wherein the applicant's name is at Sl. 119 and that of R.5 at Sl. No. 128. Therefore, the applicant was apparently senior to R.5.



The respondents issued circular dated 06.12.96 (Annex. A/3) vide which the criteria for fixation of seniority was stipulated as the date of passing of matriculation examination. Thereafter another seniority list as on 31.12.96 (Annexure A/4) was issued in which R.5 was shown at Sl. No. 8 and the applicant's name was shown at Sl. 10. Thus the applicant has been shown as junior to R.5. Although the applicant was senior as per the date of entry into service and his service record is also clean, yet the official respondents have promoted R.5 to the next higher grade of T-1 in the pay scale of Rs. 3200-85-4900, vide order dated 01.11.2002 (Annex. A/5). It is not in dispute that both the applicant and R.5 possess the requisite qualifications for the next higher post of Gr.T-I. It is further stated that the records of the applicant is clean and

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he is senior to R.5 as per the date of entry into service there is no reason to deny him the promotion.

3. Aggrieved by the impugned order dated 01.11.2002, (Annex. A/5) promoting R.5 to the next higher grade, the applicant filed O.A. No. 7/2003 - Ashan Ali vs. UOI and ors before this Bench of the Tribunal. This Bench of the Tribunal had allowed the said O.A. vide order dated 23.08.2005 and quashed the impugned order dated 07.02.97 and the impugned order dated 06.12.96 vide which two seniority lists of supporting staff (i) for persons possessing matriculation and the (ii) other for persons who do not possess matriculation were issued. The official respondents were directed to consider the case of the applicant afresh for promotion to the post of T-1 (Lab-Tech) in Category I as per the seniority assigned to him vide seniority list dated May 1996 from the date the case of respondent No. 5 was considered. It was also directed that if the applicant was found fit he would be entitled to all consequential benefits on notional basis.



4. In pursuance to the order dated 23.08.2005 (Annex. A/8 to the present O.A), of this Bench, a DPC was held on 17.11.2005. The said DPC recommended not to promote Sh. Ashan Ali to the post of T-1 (Lab Technician) in category -1 and the same has been accepted by the competent authority. The said decision has been communicated to the applicant vide orders dated 17.11.2005 (Annexure A/1). The applicant has alleged that in view of the facts

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and grounds mentioned, the action of the respondents is an outcome of colourable exercise of power which has to be regarded as arbitrary and the same is malafide in the eye of law. The same has to be deprecated and quashed. Aggrieved by this, he has filed the present O.A seeking the relief given in para 1 above.

5. On the other hand the respondents have filed a comprehensive reply to the O.A and not agreed to grant any of the relief asked for by the applicant. The respondents have pleaded that as per the Council letter dated 06.12.1996, (Annex. A/3) two separate seniority lists were drawn for supporting Staff for the purpose of promotion to the post of LDC/T-1 i.e. (i) for persons possessing Matriculation qualification and the other for non-matriculantes. The date/year of passing the matriculation examination was the criteria for fixation of seniority of eligible persons for promotion to the post of LDC/T-1 and not the experience.



6. A seniority list was prepared as on 31.12.96 in respect of Supporting Staff Gr. I. The same indicates that Shri Ashan Ali passed the matriculation examination during the year 1992 and R.5 had passed the same in the year 1987 and thus the applicant was shown as junior to R.5.

7. However, in compliance of the direction issued by this Tribunal vide its order dated 23.08.2005, a DPC was held on

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17.11.2005 to consider the case of the applicant afresh for promotion to T-1 (Lab Tech) in category 1 in the pay scale of Rs. 3200-85-4900 as per the seniority list issued in May 1996. After considering the case of the applicant for promotion, the DPC not recommended his case for promotion as T-1 (Lab-Tech) Category 1, which was accepted by the competent authority and the same has been communicated to the applicant vide order dated 17.11.2005 (Annex. A/1). The respondents have pleaded that their action is perfectly legal and valid and deserves to be upheld by the Tribunal. Therefore they have prayed that the present O.A filed by the applicant be dismissed.



The learned counsel for the parties have been heard. The learned counsel for the applicant Mr. S.K. Malik repeated the arguments given in his O.A. He particularly laid emphasis on the letter dated 12.04.1990 (Annexure A/6) and letter dated 12.09.1990 (Annexure A/7) issued by the ICAR and submitted that qualification and experience only have been prescribed for giving promotion to the officials. He also contended that DPC cannot go beyond the criteria for promotion prescribed under the Rules. DPC can only declare fit or unfit and DPC cannot recommend either to give promotion or not to give promotion. He also contended that as the applicant is senior to R.5, he should be given promotion in terms of the orders issued by the Department vide orders dated 12.04.1990 and orders dated 12.09.90.

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9. The learned counsel for the applicant relied on para 11 of the judgement of the Apex Court in the case of **UOI and ors. vs. Sangram Keshari Nayak** [(2007) 6 SCC 704] and contended that suitability or otherwise of a candidate has to be determined by the DPC in terms of the rules applicable therefore and DPC cannot go beyond the rules. In the above case, the Hon'ble Supreme Court has held as under: -

"11. Promotion is not a fundamental right. Right to be considered for promotion, however, is a fundamental right. Such a right brings within its purview an effective, purposeful and meaningful consideration. Suitability or otherwise of the candidate concerned, however, must be left at the hands of the DPC, but the same has to be determined in terms of the rules applicable therefor. Indisputably, the DPC recommended the case of the respondent for promotion. On the day on which, it is accepted at the Bar, the DPC held its meeting, no vigilance enquiry was pending. No decision was also taken by the employer that a departmental proceeding should be initiated against him."



The learned counsel for the applicant further relied on an order of Principal Bench in the case of **V.S. Arora vs. UOI and ors.** [2002 (2) ATJ 432]. In the above case, the Central Administrative Tribunal, Principal Bench, New Delhi, has held as under: -

"6. The gist of the judgments cited above is that in the event a benchmark "very good" is fixed, ACRs classified as lower than "very good" should be communicated to the concerned official. As such ACRs categorised as "good" are unsustainable.

The learned counsel for the applicant pleaded that nothing adverse against the applicant has been communicated to him.

10. In view of the above, the learned counsel for the applicant pleaded that the applicant may be given promotion with effect from the date his junior R.5 has been promoted.

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11. The learned counsel for the respondents repeated the arguments in his reply to the O.A. He averred that promotion to any government servant is not based on length of service and experience only but the entire service record of the officials who are within the zone of consideration are to be examined by the DPC. The DPC would recommend the suitability or otherwise of an official based on the over all performance and service record of the officials.



The learned counsel contended that in this case, the applicant's case has been considered by the DPC as per the directions given by this Tribunal. The DPC declared that the applicant is not recommended for the post of T-1 (Lab. Tech) Category 1. The DPC has objectively assessed the overall performance of the applicant. The DPC found that the applicant has been issued advisory notes repeatedly but he has failed to show any improvement in his performance.

The learned counsel for the respondents also produced the DPC proceedings and a summary of the personal record of the applicant. The same have been taken on record. The learned counsel for the respondents relied on a judgement of the Apex Court in the case of UOI vs. S.K. Goel and ors [SLP (C) No.2410 of 2007], which has been rendered based on an earlier decision of the Apex Court in the case of UPSC vs. L.P. Tiwari

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and ors. [2006 (12) SCALE 278]. Para 12 of the Judgement in Tiwari's case reads as under:

" It is now more or less well settled that the evaluation made by an expert committee should not be easily interfered with by the Courts which do not have the necessary expertise to undertake the exercise that is necessary for such purpose. Such was reiterated as late as in 2000 in the case of UPSC vs. K. Rajaiah and ors. reported in (2005) 10 SCC 15., wherein the aforesaid Rules for the purpose of promotion to the IPS cadre was under consideration. Apart from the above, at no stage of the proceedings, either before the Tribunal or the High Court even before this Court, has any allegation of mala fides been raised against the Selection Committee and the only grievance is that the Selection Committee erred while making assessment of the comparative merits of the respective candidates. While concluding his submissions, Mr. Rao had pointed out that the direction given by the High Court to the appellant to hold a Review Departmental promotion Committee was also erroneous since the regulations provided for selection to be made not by a Departmental promotion Committee but by a Selection Committee constituted as per the Regulations."



Relying on the above Judgement, the learned counsel for the respondents contended that the evaluation made by the DPC should not be interfered with by this Tribunal. He pleaded that the O.A. is devoid of any merit and may be dismissed.

12. We have considered this case very carefully and perused the records. This case was adjudicated earlier by this Bench in O.A. No. 07/2003 and orders were passed on 23.08.2005. The operative part of the judgement as given in para 12 of the above order is as given below:

" The upshot of the aforesaid discussion is that there is ample force in this O.A and the same stands allowed. The impugned order dated 07.02.97 and order dated 06.12.96 are hereby quashed. The respondents are directed to consider the case of applicant, afresh, for promotion to the post of T-1(Driver/Lab Technician) in category 1 as per seniority assigned to him vide seniority list dated May 1996 (A/1) from the date the case of R-5 was considered. If the applicant is found fit he would be entitled to all consequential benefits on notional basis. The order dated 01.11.2002 (A/5) shall be modified accordingly. This order shall

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be implemented within a period of three months from to day. No costs."

Accordingly his case has been considered by the respondents and he has not been found fit on the basis of assessment of over all performance and service record of the applicant. The service record of the applicant as placed before the DPC by the respondents is given below:

	1997-98	1998-99	1999-2000	2000-2001	2001-2002
Intelligence	Average	Good	Good	Good	Average
Amenability to discipline	Average	Average	Average	Average	Average
Honesty and Integrity	Integrity beyond doubt	He is honest person	He is honest person & his integrity beyond doubt	He is honest person & his integrity beyond doubt	Average
Punctuality	He is not punctual	He is not punctual in his duties	He is not punctual in his duties	-----	Average
Devotion to duty	Average	Average	Average	Average	Average
Fit for promotion	No. he is not punctual to duties so I am not ready to retain his under my supervision	No he is not yet fit for next higher promotion	He is not yet fit for next higher promotion	He is for next higher promotion	Yes
Memorandum/Advisory note issues	Memorandum/ advisory note issued but no improvement shown	Memorandum/ advisory note issued but no improvement shown	Advisory note issued but no improvement shown	Advisory note issued but no improvement shown	-----



On the basis of the above, the DPC has recorded its findings as under:

"The Departmental Promotion Committee considered the case of Sh Ashan Ali, SSG-I (Mazdoor) afresh for promotion to the post of T-1 (Lab Tech) in category 1. The following points have been observed from the Confidential reports for the period 1997-98 to 2001-2002 of Shri Ashan Ali.

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1. Devotion to duty is average.
2. He is not punctual to his duties.
3. memorandums were issued to improve the punctuality but not improvement was shown. (Gist of above five years confidential reports is enclosed at Annex. A)

In view of the above, the committee does not recommend Shri Ashan Ali SSG -I (Mazdoor) for promotion to the post of T-1 (Lab Tech) in category I."

In the guidelines for promotion, the Department of Personnel and Training has stipulated under orders issued vide G.I Department of Personnel and Training OM No. 22011/5/86- Estt. (D), dated the 10th April 1989 as amended by OM No. 22011/5/91 Estt. (D) dated 27th March 1997 the procedure to be followed by the DPC as under: -

"6.1.3 While merit has to be recognized and rewarded, advancement in an officer's career should not be regarded as a matter of course, but should be earned by dint of hard work, good conduct and result-oriented performance as reflected in the annual confidential reports and based on strict and rigorous selection process.

6.1.4 Government also desires to clear the misconception about "Average" performance. While "Average" may not be taken as adverse remark in respect of an officer, at the same time, it cannot be regarded as complimentary to the officer, as "Average" performance should be regarded as routine and undistinguished. It is only performance that is above average and performance that is really noteworthy which should entitle an officer to recognition and suitable rewards in the matter of promotion.

Evaluation of Confidential Reports

6.2.1 Confidential Rolls are the basic inputs on the basis of which assessment is to be made by each DPC. The evaluation of CRs should be fair, just and non-discriminatory. Hence -

(a) xxxxx

[(b) The DPC should assess the suitability of the employees for promotion on the basis of their Service Records and with particular reference to the CRs for **five preceding years** irrespective of the qualifying service prescribed in the Service/Recruitment Rules. The 'preceding five years' for the aforesaid purpose shall be decided as per the guidelines contained in the DoP & T O.M. No. 22011/9/98-Estt. (D),



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dated 8.9.1998, which prescribe the Model Calendar for DPC read with OM of even number, dated 16-6-2000. (if more than one CR have been written for a particular year, all the CRs for the relevant years shall be considered together as the CR for one year.))

13. The case laws quoted by the learned counsel for the applicant are not much helpful to the facts of the case before us. In **Sangram's** case supra, the Apex Court has held that suitability of an official has to be assessed on the basis of Rules. Admittedly, the DPC has assessed the performance of the applicant as per the Rules only. Therefore, this case cannot be pressed into service by the applicant in his favour.



The case of V.S. Arora is based on Bench Marking. But in the case on hand, no Bench marking has been done by the DPC for promotion, and therefore this case is also not of any help to the applicant.

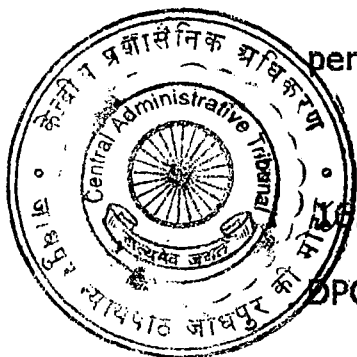
14. As regards communication of adverse remarks in the ACRs - Government of India, Department of Personnel and Administrative Reforms, has stipulated vide its O.M. No. 21011/1/77-Estt., dated 30th January, 1978 - that all adverse entries in the confidential report of Government servant, both on performance as well as on basic qualities and potential should be communicated along with a mention of good points within one month of their being recorded. This communication should be in writing and a record to that effect should be kept in the CR dossier of the Government servant concerned. As ACRs of the applicant

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were not adverse, therefore the same have not been communicated to him.

15. Admittedly, promotion is not a fundamental right; but consideration for promotion is. Suitability or otherwise of an official must be left to the hands of DPC, which is an expert body. The applicant's case has been considered on the basis of the rules applicable at the relevant point of time. The DPC has found that the applicant is not fit for promotion on the basis of overall performance and his service record.



16. The case of the applicant has been considered by the review DPC as per the direction given by this Tribunal vide its order dated 23.08.2005 and the DPC has found that the applicant is not fit for promotion on the basis of his over all performance and service records. The DOPT has stipulated that promotion should be earned by dint of hard work, good conduct and result oriented performance. The Apex Court has held that normally the Courts/Tribunal should not interfere with assessment made by a DPC.

17. In view of the above discussion, it is clear that the DPC has been held to consider promotion of the applicant as directed by this Bench of the Central Administrative Tribunal vide its orders dated 23.08.2005. He has not been given promotion on the basis of his overall performance and service records. As the performance of

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the applicant is quite undistinguished and he has not improved his performance in spite of issuing advisory notes, this Court would, therefore, not like to interfere with the orders dated 17.11.2005 issued by the respondents.



Original Application is devoid of any merit and is dismissed.


No order as to costs.

Tarsem Lal
(Tarsem Lal)
Administrative Member


jsv.

N.D. Raghavan
(N.D. Raghavan)
Vice Chairman.

Part III ~~XXXX~~ destroyed
in my presence on 05-6-14
under the supervision of
section officer (J) as per
order dated 26-7-14


Section officer (Record)

Copm hand H. S. D. S.
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Recd copy from

S. K. Malhotra
4/11/08