

**Central Administrative Tribunal
Lucknow Bench, Lucknow**

O.A.No.130/2005

Wednesday, this the 18th day of March 2009

**Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Smt. Veena Chhotray, Member (A)**

S.K. Shukla

17/04/09
S.S. Shukla son of Late Shri Jagannath Prasad Shukla
Resident of House No.568 Kha/358, Block No.5
Geetapalli, Alambagh, Lucknow (lastly working as
Supervisor B/S Grade I, office of the Garrison Engineer
(West), Lucknow-226002

..Applicant

(By Advocate: Shri R.C. Singh)

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi-1
2. Engineer-in-Chief, Army Headquarters, Kashmir House, DHQ PO, New Delhi-11
3. Chief Engineer, Central Command, Lucknow 226002
4. Chief Engineer, Lucknow Zone, Lucknow 226002
5. Shri V.K. Sidharthan the then Garrison Engineer (West) Lucknow (now C/o Army Headquarters, Engineer-in-Chief's Branch, Kashmir House DHQ PO, New Delhi-11

..Respondents

(By Advocate: Shri Rajender Singh)

O R D E R (ORAL)

Shri Shanker Raju:

Heard the learned counsel for the parties.

2. Respondents have not filed their regular reply. Right to file regular reply on final opportunity stands forfeited. Hence counter reply is not taken on record. However, short reply filed by the respondents is taken on record.

3. Applicant admittedly got the punishment order dated 13.5.1997 quashed in OA-273/1997 decided on 6.6.2003 wherein directions have been issued to consider the claim of the applicant on the basis of DPC held in 1995. Respondents effected the promotion of the applicant without taking into consideration the minor penalty of 'censure' w.e.f. 13.5.1997. However, the request of the applicant for being promoted as Supervisor B/S Grade I with effect from 1995 has been turned down on the ground that it is not the penalty of 'censure', which is an impediment made him unfit as per adverse entries in ACR for the period of 1990-91. The aforesaid is being challenged by learned counsel for applicant in this OA.

4. On perusal of the ACR, we do not find that the applicant was declared unfit for promotion to higher grade in his turn and has been observed to be unfit for promotion to the post of Supervisor B/S Gr-I. A specific averment as to the deficiency not being put to the applicant by way of memos, warnings and advisory note has not been refuted by the respondents in their short reply.

5. The Apex Court in **State of U.P. v. Yamuna Shanker Misra & another**, (1997) 4 SCC 7 has held that it is incumbent upon the reporting officer to convey to the government official his deficiency, failing which the assessment would neither be objective nor reasonable in the circumstances. As this obligation has not been discharged, ACR of 1990-91 of the applicant and the adverse remarks recorded therein cannot be countenanced in law.

6. Though the OA is vehemently opposed by learned counsel for respondents, yet we find that when the consideration for promotion in 1995 was withheld only because of adverse remarks in ACR, but now on quashing the ACR, there will be no impediment for such a reconsideration and we order accordingly.

7. Resultantly, OA is disposed of with a direction to the respondents to now hold a review DPC to consider the claim of the applicant for promotion as Supervisor B/S Grade I with effect from 1995 as per rules and instructions on the subject. Applicant is also entitled for other benefits as per rules. This shall be done within a period of three months from the date of receipt of a copy of this order. No costs.

Chhotray
(Veena Chhotray)
Member (A)

/sunil/

S. Raju
(Shanker Raju)
Member (J)