

Central Administrative Tribunal, Lucknow Bench, Lucknow

O.A. No. 197/2005

This, the ~~7~~ day of March, 2009

**Hon'ble Mr. M. Kanthaiah, Member (J)
Hon'ble Dr. A.K. Mishra, Member (A)**

Lal Jee Verma aged about 50 years son of Sri Soney Lal Verma r/o 2/128, Rashmi Khand, Sharda Nagar, Lucknow.

Applicant

By Advocate: Sri Amit Chandra

Versus

1. Union of India through Secretary, Agriculture, Ministry of Agriculture, New Delhi.
2. Director, Indian Institute of Sugar Cane Research, Rai Bareily Road, Lucknow-226002.

Respondents

By Advocate: Sri Deepak Shukla for Sri Prashant Kumar

ORDER

BY HON'BLE SHRI A.K. MISHRA, MEMBER (A)

This is an application challenging the inaction of the respondents in not promoting the applicant on the post of T-5 w.e.f. the date officers junior to him have been promoted. His prayer is for a direction to the respondents to promote him on the post of T.5(category II) w.e.f. 1.12.2002 or any other direction which the Tribunal may consider just and proper.

2. The applicant was appointed on the post of Technical Assistant on 2.3.1981. He got a number of promotions up to the rank of T-4 (Technical Assistant) on the basis of satisfactory record of service. Thereafter, he was eligible for promotion to the next higher rank in the scale of T-5. One, Dr. Om Prakash, who, according to the applicant, is junior to him was promoted to this rank vide order dated 29.12.2003 of the respondents (Ann. 13). It is his case that Dr. Om Prakash was selected along with him for the post of T-(II)-3 (Technical Assistant) and joined on that post on 16.12.1992, whereas the



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◆ applicant joined on 1.12.92. As such, it is his claim that Dr. Om Prakash is junior to him in the rank of T-3.

3. Applicant made representations on 3.1.2004 and 15.3.2004, but these were rejected by order dated 17.4.2004 saying that his case for promotion, though duly considered by the Departmental Assessment Committee, was not recommended on the ground that he was not fit either for promotion, or for grant of advance increments. The applicant submitted many more representations and reminders, but to no avail.

4. The applicant was asked to submit assessment report again by an order dated 27.9.2004, which he duly complied with on 30.9.2004. But, again by an order dated 12.10.2004, some more junior persons were promoted to the exclusion of the applicant. It is his case that no adverse remarks against him had ever been communicated and he has been unfairly denied the promotion without valid reasons.

5. At the time of hearing, the main point advanced was that non-communication of adverse remarks, if any, in his performance records would constitute denial of due opportunity to represent his case, and as such would constitute a violation of natural justice. At the request of learned counsel for the applicant, the relevant service records which were considered by the Assessment Committee were called for. Those were placed before us by the learned counsel for the respondents with the submission that the applicant had failed to mention any thing in part II of the Annual Confidential Report about his performance during the year 2002-03. Instead of giving a detailed resume of the work performed, he simply mentioned that he discharged whatever responsibilities were assigned to him. This was commented upon in the remarks of the reporting officer, who said that in the absence of any information in part II of the report, which the applicant was supposed to fill up, it was not possible to assess the

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performance of work and further that the applicant had given a vague statement which was indicative of his insincerity in attending to his work as well as his indifferent attitude during the period of under report.

6. The admitted position is that the adverse comments of the reporting officer which were endorsed by the reviewing officer were not communicated to the applicant. The learned counsel for the respondents maintains that it was within the knowledge of the applicant to provide details of work done in Part II of the ACR which he has deliberately failed to report. As a matter of fact, he was providing these details in the previous years, and there was no problem in granting him promotion earlier. But in the absence of any information about the work done, it was difficult for the Assessment Committee to come to any finding about the quality of work performed by him. Hence, he was not considered fit for promotion. Since this was very much within the knowledge of the applicant, there was no need for communicating these remarks once again. We find that the applicant was remiss in not providing the details in part II of the ACRs for 2003-04, 04-05, 06-07 and 07-08 with similar, comments from the authorities about non-supply of the resume'.

7. The learned counsel for the respondents brought to our notice that the assessment of the Appropriate Committee, the assessment of the Committee in the case, could not be interfered with in a court of law. This position is not disputed, but we have to confine ourselves to the only point whether there was denial of any natural justice. It is not disputed that the promotions in the Technical Grades of the Indian Council of Agriculture Research (ICAR) are governed by technical service rules and the principle followed is that of selection by merit of candidates. Therefore, the principle of seniority is not of importance and what needs to be considered is whether the applicant was denied promotion although he had the merit and the eligibility for



it. It is submitted by the respondents that applicant's case for promotion/ grant of advance increment was placed before the Assessment Committee on 20.12.2003 and also on 5.10.2004 and on both the occasions, he was found wanting. Therefore, on the basis of merit consideration he was superseded; so there was no illegality in ignoring him and giving promotion to eligible candidates who might have been junior to him.

8. It is an admitted fact that the remarks in ACRs have not been communicated to the applicant and these remarks have been utilized in denying the promotion to the applicant. We would refer to the decision of the Apex Court in the case of **2008 AIR SCW 3486 Dev Dutt Vs. Union of India and Others**, in which it was held that even an entry 'Very Good' or 'Good' in the ACR, if it did not meet with the bench mark, has to be communicated to the employee concerned, so that he has an opportunity to make a representation against it and also to take steps to rectify his mistake in future. Relevant extract of this Judgment is placed below:

"40. We further hold that when the entry is communicated to him, the public servant should have a right to make a representation against the entry to the concerned authority and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servant. The State must be a model employer and must act fairly towards its employees. Only then would good governance be possible.

45. In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence such non-communication would be arbitrary and as such violative of Article 14 of the Constitution."

9. In view of the position of law as enunciated in this case, we find that the remarks in the ACR which had adverse consequences for



the applicant had not been communicated to him. As such, he did not have an opportunity to represent against it, or to rectify his mistake in future. Under the circumstances, we hold that the respondents should communicate all the remarks in his ACRs from 2002-03 onwards which were utilized in denying him promotion within one month from the date of this order. The applicant may file representations against these remarks within one month thereafter. In case, the remarks are expunged and there is a need for meeting of ^{holding a} _{the} review DPC, the same may be held within three months thereafter.

10. The Original Application is disposed of with the above observations. No costs.

A. K. Mishra
(Dr. A. K. Mishra)

Member (A)

19/03/09
19/03/09

M. Kanthaiah
(M. Kanthaiah)

Member (J)

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