

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW.
ORIGINAL APPLICATIONNO: 177 OF 2005
THIS, THE 24 TH DAY OF MAY 2005.

HON'BLE SHRI SHANKAR RAJU MEMBER (J)
HON'BLE SHRI S.P. ARYA MEMBER (A)

Parmeshwar Sah (MES No. 405309), aged about 55 yrs, son of Late shri santoshi Sah, resident of House No. 2/40, Viram Khand, Gomti Nagar Lucknow(Presently working as Director (Personnel) in the office of Chief Engineer, Lucknow Zone, Lucknow-226002.)

Applicant.

By Advocate Shri R.C.Singh

VERSUS

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Engineer-in-Chief, Army Headquarters, Kashmir House, Rajaji Marg, DHQ PO New Delhi-11001.
3. Union Public service Commission, Dholpura House, New Delhi, through its secretary.
4. MES 113337 Shri K.P. Pillai, Superintendent engineer, C.C.E.R& D, D.R.D.O., New Daimond Point, Mud Fort, secunderabad (A.P.)

Respondents.

By Advocate Shri: S.P. Singh. ~~shri~~ shri Raj Singh for Shri A.K.Chaturvedi for respondent No.3.

ORDER

BY HON'BLE SHRI S.P. ARYA MEMBER (A)

The applicant while working with respondents as Superintending Engineer was in the zone of consideration for promotion to the post of Additional chief Engineer in the Military Engineering Services of the Ministry of Defence against the vacancies for the year 2005-2006. A panel for such promotion was published on 13.4.2005. This panel did not include the name of the applicant. He moved a representation to the respondents No. 1 and 2 on 19.4.2005. Finding the matter ^{extremly} urgent, he filed the O.A. for issue of direction to the respondents to reconsider the case of the applicant for promotion to the post of Additional Chief Engineer

grade by holding review DPC ignoring the uncommunicated grading below the bench mark and promote the applicant to the post along with his batch mates and also to set aside the impugned panel dated 13th April, 2005.

2. We have heard the learned counsel for the parties and perused the pleadings.

3. The case of the applicant is that his work and conduct has all along been of high standard and he has never been communicated any adverse remarks in the ACRs, nor given any show cause notice of any disciplinary case. His non inclusion in the panel is perhaps because of his ACR gradings below the bench mark 'Very Good'. His work was appreciated by the superiors and visiting dignitaries. The panel is illegal, unjust, unfair, unreasonable, arbitrary and violative of Articles 14 and 16 of the Constitution as well as Principles of Natural Justice.

4. The contention of the respondents is that the applicant has approached the Tribunal without exhausting the departmental remedy available to him. The applicant was duly considered by the DPC held for the vacancies of the year 2005-2006 for promotion to the post of Additional Chief Engineer. The panel has been issued in accordance with the rules on the subject and there is no illegality or infirmity in the panel. The DPC did not find the applicant fit for the said post based upon the assessment in the Confidential Reports.

✓ The promotion to the said post, which is above JAG

post, is done on the basis of DOP&T O.M. dated 8.2.2002. The applicant could not be promoted to the post due to his performance in the past five years accessed by various officers and in terms of the aforesaid O.M. Sri S.K. Kalia and Sri Yash Pal are due for superannuation on 31.5.2005 and shall be put to great injustice if interim order dated 27.4.2005 for not making any appointment on the post continues.

5. The counsel for the applicant has vehemently argued that all the ACRs which were below the bench mark 'Very Good' should be communicated to the applicant and in case of non communication of such remarks should not be considered while assessing the grading for promotion. He has relied upon 1996(1) SLR 743 U.P. Jal Nigam and others Vs. Prabhat Chandra Jain; (1996) 33 ATC 802 Uday Krishna Vs. Union of India; 2002(3) ATJ 7 Dr. Binoy Gupta Vs. Union of India and others; Judgment and order in O.A. No. 456/2000 (B.L.Srivastava Vs. Union of India) and the orders of the Hon'ble Supreme Court in the SLP of Dr. Binoy Gupta's case.

6. The counsel for the respondents on the other hand relied on the CAT full Bench judgement in O.A. No.555/2002 (D. A.K. Dawar Vs. UOI and others) and Judgement and order dated 16.4.2004 in O.A. No. 838 of 2003 CAT Mumbai Bench.

7. It is trite law that down grading of ACRs which may be from year to year or from reporting officer to reviewing officer has to be communicated in case where steep fall is there in the standards or

grading. In CPWD Manual it is also provided that in case of fall in the standard, the officer concerned has to be alerted. The communication of remarks which are below bench mark in the ACR was gone into in detail in O.A. No. 1648/2003 and in O.A. No. 2955/2003 (Prashant Gupta and Upendra Singh Vs. Secretary, Department of Revenue and another by the Principal Bench. After discussing the case of J.S. Garg, S.M. Verma, A.K. Dawar, Manik Chand, Gurdial Singh Fijji, Yamuna Shanker Misra, Narendra Nath Sinha, M.S. Preety, Rajendra Kumar, Islamic Academy of Education, Ashwani Kumar Singh and L. Chandra Kumar etc. it was held that :

"51. From the above discussion we have no hesitation to hold, which is the true import of the latest full bench decision of the Tribunal in Dawar's case that if there is a down grading in the ACR, i.e. when the remarks given by the reporting officer are toned down by the reviewing officer irrespective of the steep fall in the light of the decision in Narendra Nath Sinha's case (supra) of the Apex Court. The same shall be adverse and communicated to the concerned or in the alternative same may be ignored and consideration be made by holding a review DPC."

"52. As regards down grading in general of ACR, i.e. from year to year, for example from 'very good' to 'good' or from 'outstanding' to 'average' unless the same is a steep fall and the down graded remarks are adverse in nature and accordingly the same need not be communicated or treated as adverse."

8. In Nasir Hussain Khan Vs. Union of India and others in O.A. No. 838 of 2003 decided on 16.4.2004

(Mumbai Bench) has held that in case there is no down grading in the ACR, in that event the grading of good given to the government employee irrespective of the bench mark for the next promotion being 'very good' need not to be communicated or to be treated as adverse.

9. We have perused the minutes of the meeting of DPC held on 23.3.2005 and ACRs of the applicant. The ACR grading as given therein is as follows:-

| Year | Grading of Reporting Officer | Grading of Reviewing Officer | Grading of accepting/Counter Signing Officer |
|------------------------|-------------------------------------|-------------------------------------|---|
| 2004-05 | Outstanding | Very Good | Very Good |
| 2003-04 | Outstanding | Outstanding | Very Good |
| 2002-03 | Very Good | Very Good | Very Good |
| 2001-02 (10 months) | Very Good | Very Good | Very Good |
| 2000-01 (11 months) | Average | Average | Average |
| 1999-2000 | Average | Average | Average |

10. In view of the judgments delivered in Prashant Gupta's and Nashir Hussain Khan's case, we do not find any steep fall in the ACRs which should be communicated. However, finding that the 'outstanding' grading has been toned down by the accepting authority in the year 2003-2004 and no specific reasons have been recorded therefore and the 'outstanding' entries given by the reporting officer in the year 2004-05 has been toned down by the Reviewing Officer and agreed by the accepting Officer without recording reasons, such a down grading should have been advised to the applicant.

11. The DOP&T instruction of 8.2.2002 provide for the DPC to grade the officers as 'fit' or 'unfit' only with reference to the bench mark. The DPC is not bound

to blindly accept the grading given by the officers writing the ACRs but after evolving its own procedure it has to make over all assessment for grading the officers 'fit' of 'unfit'. However, the element of accepting the grades given by the officers may not be lost sight of while making over all assessment. How, did the DPC read the ACRs and came to the conclude the grading is not on record.

12. Be that as it may, their being no allegation of malafide or bias against the DPC members, the selection panel requires no interference. The non communication of toned down grading were not below the bench mark for the year 2003-04 and 2004-05 and as such is not going to prejudice the applicant in presence of the average entries for some other years.

13. In view of the above discussion, we are of the considered opinion that the panel published by letter dated 13.4.2005 requires no interference. Respondents shall advise to toning down of the grading for the year 2003-04 and 2004-05 to the applicant as observed above.

14. With the above observation, O.A. is dismissed with no order as to costs.

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(S.P. ARYA)
MEMBER (A)

S. Raju
(SHANKAR RAJU)
MEMBER (J)