

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:476/2001
DATED THE 24TH DAY OF JAN, 2002

CORAM:HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT, VICE CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)

Shri N.M.Visal,
Asst. Supervisor, 8060436
Military Farm, Ahmednagar.

... Applicant

By Advocate Shri R.C.Raviani

V/s.

1. Union of India,
Through:The Secretary,
Ministry of Defence,
South Block, New Delhi-110 011

2. The Deputy Director General Military Farms,
AHQ, QMG's Branch, West Block-III,
R.K.Puram, New Delhi-110 066.

3. The Director Military Farms,
HQ, Southern Command,
Khadki, Pune - 411 003.

4. The Officer Incharge,
Military Farm,
Ahmednagar : 414002.

... Respondents

By Advocate Shri R.K.Shetty

(ORAL)(ORDER)

Per Smt.Shanta Shastri, Member(A)

The applicant has approached this Tribunal with a grievance that he has been denied upgradation to a higher scale under the Assured Career Progression Scheme(ACP).

2. The applicant was initially appointed as Sub Assistant Supervisor in 1963, thereafter was promoted to the next higher post of Assistant Supervisor in 1983. He continues to stagnate in the same post till date. The applicant had also passed and qualified in the necessary Military Farm intermediate Course in the year 1986. The next promotion is that of Supervisor and

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qualifying in the examination is necessary which the applicant has already accomplished.

3. The Government of India introduced ACP scheme for the Central Government civilian employees vide DOP&T OM No.35034/1/97-Estt(D) dated 9/8/1999. This was introduced mainly as a safety measure to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. In this scheme two financial upgradations have been provided to Group 'B', 'C' and 'D' posts and Isolated posts in Groups 'A', 'B', 'C' and 'D' categories. Thus upgradation is provided to employees of Groups 'B', 'C', and 'D' on completion of 12 years and 24 years of regular service respectively. This is besides the normal promotional avenues available on the basis of vacancies.

4. The respondents considered several candidates for the upgradation to the post of Supervisor under the ACP scheme. The applicant was also considered. However, he was not granted the second upgradation as he had already received one promotion earlier.

5. The respondents have informed the applicant vide letter dated 23/5/2001 that he could not be granted financial upgradation unless he was assessed fit by the screening committee.

6. The respondents submit that the applicant was duly screened and was not found fit for the upgradation.

7. The learned counsel for the applicant submits that upgradation under ACP is different than the regular promotion. The norms of regular promotion are not to be complied here as the duties and responsibilities do not change. It is only a financial upgradation. Secondly, all along the applicant has

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fared well and has not received any adverse entries in his record. He has also passed the qualifying examination. In these circumstances, there is no reason why he should have been denied the upgradation.

8. The learned counsel for the respondents submits that the post of Supervisor is a selection post and all the procedural formalities which are required to be followed for regular promotion are required to be observed even for upgradation under the ACP scheme. There is a committee which screens the record of the candidates for selection and therefore upgradation is not a mere formality but it is a proper positive selection. The learned counsel has drawn our attention to para-6 of the Annexure-1 to the OM dated 9/8/99 regarding ACP scheme. Annexure -1 lays down the conditions for grant of benefit under ACP scheme. In para-6 it is provided as follows:-

"6. Fulfilment of normal promotion norms (benchmark, departmental examination, seniority-cum-fitness in the case of Group 'D' employees, etc) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradation as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc) shall be ensured for grant of benefits under the ACP scheme."

9. The applicant has been assessed as 'average' on the basis of his record and has been found not fit and therefore he has not been granted the benefit of the upgradation under the ACP scheme.

10. The learned counsel for the applicant argued that mere 'average' record should not come in the way of the applicant.

getting the upgradation. It is not an adverse entry. Also no particular Bench mark has been prescribed for promotion to the aforesaid post of Supervisor.

11. According to the respondents, the Bench mark for the post is 'Good' and since the applicant was only average, he has been declared unfit. The learned counsel has produced the relevant record of the screening committee relating to the selection for the post of Supervisor under the ACP scheme.

12. We have heard the learned counsel for the applicant as well as respondents and have perused the proceedings of the screening committee. We find that the applicant was eligible for consideration for second upgradation under the ACP scheme. He was therefore rightly considered in the selection held on 17/1/2000 and was not found fit. The applicant was further considered in subsequent meetings of the screening committee held on 30/9/2000, 15/2/2001 and 30/9/2001 and was not found fit. However, even in those meetings throughout he is assessed as 'average' only.

13. Nothing has been shown to us to indicate that the Bench Mark for the post of Supervisor is 'Good'. However, there are general instructions of the DOP&T according to which for posts in Group 'C' bench mark is good. We refer to para 6.3.1(i) of OM dated 10/4/1989 of the DOP&T. The same is reproduced below:-

Having regard to the levels of the posts to which promotions are to be made, the nature and importance of duties attached to the posts, a benchmark grade would be determined for each category of posts.

For all Group 'C', Group 'B' and Group 'A' posts (up to and excluding the level of Rs.3,700-5,000) the benchmark would be 'Good' and will be filled by the method of Selection-cum-Seniority as indicated in sub-para(iii)

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14. This being a selection post, even though average cannot be an adverse grading, comparative merit matters and therefore it cannot be said that the 'average' grading cannot come in the way of selection of the applicant. Therefore, it is not that if there were sufficient number of vacancies, the applicant could have been considered inspite of being graded 'average'. Infact all those who fulfilled the Bench mark of 'Good' can be considered for upgradation.

15. We have perused the record and we find that it is not only the applicant alone who has received the assessment of 'average' and has not been found fit but there are others also similarly assessed as 'average' and declared unfit. It is not an isolated case.

16. The learned counsel for the respondents has relied on a judgement in OA-831/2000 in the matter of R.N.Nimbalkar V/s. Ministry of Defence decided on 6/11/2001 by this Tribunal where one of us (Shri B.Dikshit, Vice Chairman) had presided. In this OA, the applicant therein was not granted the benefit of the second upgradation under the ACP Scheme because he had not passed the qualifying departmental examination as required for the regular promotion. The Tribunal also relied on para-16 of the Annexure to DOP&T letter dated 10/2/2000 as well as on para-6 of Annexure to OM dated 9/8/99. In short, as per this scheme promotion norms have to be fulfilled for upgradation under the scheme. As such no upgradation can be allowed if the employee fails to pass the qualifying examination.

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17. The learned counsel for the applicant argued that the aforesaid judgement is not applicable in the present case as the applicant has passed the qualifying examination way back in 1986. Therefore, these two cases are not comparable. We do not agree. The requirement is not only passing of examination but fulfilling of all the other norms such as Bench Mark, seniority-cum-fitness, etc as required for normal promotion and the applicant has not been able to get the Bench Mark of 'Good' and therefore in our considered view, the ratio of the judgement in OA-831/2000 is applicable to this case.

18. In view of the reasons recorded above, the applicant has no case. The respondents action cannot be faulted. Accordingly, the OA is dismissed without any orders as to costs.

Shanta S
(SMT. SHANTA SHASTRY)
MEMBER(A)

B. Dikshit
(BIRENDRA DIKSHIT)
VICE CHAIRMAN

abp

dl 24/1/2
Order despatched
to Applicant/Respondent(s)
on *22/2/2*

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