

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH.

Original Application No.498/2001.

Wednesday, this the 10th day of October, 2001.

Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman,
Hon'ble Smt. Shanta Shastry, Member (A).

B. Pramanick,
Jaya Ameya Co-op. Hsg. Society Ltd.,
Shree Ganesh Kripa Apartment,
New Jimi Baug, P.O.Kalemanevli,
Taluka Kalyan (East),
Dist. Thane (M.S.) - Pin 421 306.Applicant.
(By Advocate Shri G.K. Masand)

v.

1. Union of India through the
Secretary in the Ministry of
Defence, South Block,
New Delhi - 110 001.
2. Board of Control Canteen Services,
L-1 Block, Room No.16,
New Delhi - 110 001.
3. General Manager,
Canteen Stores Department,
'ADELPHI' 119, M.K.Road,
Mumbai - 400 020.Respondents.
(By Advocate Shri R.R. Shetty for
Shri R.K. Shetty)

: O R D E R (ORAL) :

Smt. Shanta Shastry, Member (A).

The applicant has approached this Tribunal with a grievance that he was not selected for promotion to the post of Deputy General Manager (F & A).

2. The applicant was promoted to the post of Assistant Accounts Officer in CSD on 19.1.1983 and was further promoted as Asstt. General Manager (Accounts) on regular basis on 27.8.1994. For the promotion to the post of Deputy General Manager (F & A), an Officer is required to put in 5 years of regular service in the post of Assistant General Manager. The applicant had put

in 5 years of regular service as on 27.8.1997. Further, the post of Dy. General Manager can be filled in by promotion failing which by transfer on deputation, failing which by direct recruitment. Since the applicant had become eligible in 1997, he approached the authority concerned to consider him for promotion. A DPC was held on 10.9.1998 to consider candidates for promotion to the post of Dy. General Manager (F & A) in the Canteen Stores Department of the Ministry of Defence. The DPC did not recommend the applicant for promotion. The applicant was informed on 26.4.1999 about his non-selection.

2. A further DPC was held on 13.6.2001 for filling up of the same post. Again the applicant was considered and the DPC did not recommend him for promotion to the post of Dy. General Manager. The applicant was informed on 3.7.2001 i.e. ^{vide} the impugned order, that no candidate from the feeder grade had been recommended for promotion by the DPC. A copy of the letter dt. 21.6.2001 in this connection was also enclosed.

3. It is the contention of the applicant that there has been a bias developed by the Respondents in favour of service officers and against the departmental officers, when it comes to filling up of the post of Dy. General Manager (F & A). The applicant has produced details of previous incumbents of this post, wherefrom it could be seen that except for ^{one} one occasion, on the other occasions, the post was filled through service officers and not through any civilian officer and this was done on deputation basis. The applicant has further contended that his work and performance have always been appreciated and no adverse remarks have been communicated to him at any time. The

applicant submits that after he had become eligible for promotion he had sent a representation on 5.5.1997 requesting to convene a DPC at the earliest to consider his case. According to the applicant, though the respondents held a DPC, it was only a ~~pass~~ ^{force}. Again another Service Officer, Wing Commander M.N. Talukdar was brought in on deputation in September, 1999. Further, the applicant submits that the Bench Mark prescribed for the promotion to the post of Dy. General Manager is 'very good'. Though no adverse remarks were communicated to the applicant, the applicant presumes that since he was not selected he was not able to come upto the Bench Mark 'very good'. In that event, according to the applicant, any grading below the Bench Mark of 'very good' should have been treated as adverse and a communication to that effect should have been made to the applicant. The applicant further states that according to him, he has been declared fit for promotion. In fact, the Respondent No.2 has issued instructions/guidelines vide letter dt. 15.5.2000 wherein it hasbeen advised that once a person is graded below the Bench Mark for the next grade, then recommending him fit for promotion is inconsistent and may make the ACR null and void. Any adverse remark should be communicated to the individual concerned. In view of this also, the applicant needed to be communicated if his grading had not come up to the Bench Mark and especially when he was already found fit for promotion, he could not have been graded below the Bench Mark. The applicant, therefore, prays that a Review DPC may be directed to be convened to re-consider his case.

3. The Learned Counsel for the Respondents contests the same

OA 777/93, wherein the Tribunal has clearly held that even 'average' entry in the ACR cannot be considered to be adverse, leave alone an entry which is below the Bench Mark. He has further placed reliance on a decision of the Principal Bench of the Tribunal in OA No. 576/99 (decided on 27.4.2000) - Dr. H.N.Mathur Vs. Union of India and Ors., where also, the Tribunal has taken a similar view that an entry below the Bench Mark need not be communicated. In regard to bias, the Respondents have submitted that the post of Dy. General Manager (F & A) has always been filled in accordance with Recruitment Rules and there is no bias or any favour or while filling up the said post. The DPC had gone clearly by the ACR of the applicant. The Learned Counsel also submitted that in a case decided by this Tribunal it had been held that any grading below the Bench Mark should first be communicated and the applicant should be given an opportunity to represent against the same and thereafter to hold a Review DPC. However, the Hon'ble High Court of Bombay has stayed the aforesaid Order and therefore, also the respondents are on a stronger ground in rejecting the case of the applicant on the basis of the assessment done by the DPC.

6. We have given careful consideration to the contentions of the rival parties. We considered it necessary to see the record pertaining to the DPC meetings, as well as the ACRs of the applicant. The same were produced and we have perused the same. We find that the applicant received three 'good' gradings and two 'average' gradings and on the basis of the ACRs, the DPC graded the applicant as 'good'. The applicant was the only candidate for consideration. The applicant has a right for

consideration and not for promotion. So, the respondents rightly considered him. It is not that they did not consider him at all. After due consideration, the applicants case was not recommended. We do, however, find as rightly claimed by the applicant that in all the ACRs, the applicant has been shown to be fit for promotion except in one ACR where it is said that he may be considered for promotion in his own turn, this certainly is contradictory as it goes against the grading of 'very good' required for keeping fit for promotion.

7. We have also perused the Judgments relied upon by the Learned Counsel for the Respondents and we are also aware of certain other judgments, wherein a view has been taken that any grading below Bench Mark should be communicated, even though it may not be adverse. In our view, when the promotion is for a selection post and where there is a Bench Mark laid down, the Officers are expected to come upto the Bench Mark. The very purpose of laying down the Bench Mark is that a minimum standard performance is expected of the concerned officers. Therefore, if a person does not come upto that Bench Mark, but otherwise has a good record, there is no need to communicate such grading to the concerned officer. However, in this particular case, we find that the Reporting in the ACRs is contradictory. While on the one hand a grading of good is given, on the other hand in the same breath it is recorded that the officer is fit for promotion. This cannot be accepted, as only one who has the Bench Mark can be considered fit for promotion. Therefore, either the applicant should have been given 'very good' grading or he should not have been treated as 'fit for promotion'. Since every Reporting Officer has treated the applicant as fit

for promotion, in our considered view, the applicant's case needs to be re-considered. We feel therefore, that ends of justice will be met, if the respondents are asked to convene a Review DPC to reconsider the matter in the light of the remark of fit for promotion made in the ACRs.

8. The applicant is due to retire on 31.10.2001. We, therefore, direct the Respondents to convene a Review DPC 13.6.2001 to consider the case of the applicant for promotion to the post of Dy. General Manager (F & A) and take a decision before 31.10.2001. If the applicant is found fit for promotion, he may be given notional promotion from the date of the DPC held on 13.6.2001 with consequential benefits. As far as promotion w.e.f. 1998 DPC is concerned, we are not inclined to grant any relief, as the applicant has approached this Tribunal belatedly in that respect is beyond the period of limitation of one year. In the facts and circumstances of the case, the OA is allowed. We do not order any costs.

Shanta S-

(SHANTA SHAstry)
MEMBER(A)

B. Dikshit

(BIRENDRA DIKSHIT)
VICE-CHAIRMAN

B.

L.I.F./No. 352/02
for Extension of
time. Fixed for
hearing on 6/5/02.

29/4/02

6.5.2002

Heard Sri R.K. Shetty
on M.P. 352/02 seeking
extension of time to comply
with Order dated 498/01.
We are not satisfied with
the reason assigned in
M.P. 352/02. It is accordingly
dismissed.

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fixed

Ans

(B.N. Bahadur)

M(A)

present

(B-Dekshik)

V.C.

Ans

9.8.2002

dtd. 6.5.2002
order/injunction despatched
to Applicant/Respondent(s)
on 27.5.2002

RP
6/6.

C.P./No. 59/02
for order
fixed for hearing.
on 9/8/02.

Ans

9.8.2002
Ms. S.L. Sawant learned counsel
for applicant on CP 59/02
Brought Sri R.R. Shetty for the respondents.
Heard the learned counsel
for the applicant. We are convinced
that there is a prima facie
case for proceeding in the matter.
and at this stage we order notice
only to alleged contemnee no. 3.
Notice to others will be issued later
if considered necessary. Applicant's
counsel states that she will
check up the position about
alleged contemnee no. 1 whether he
is in office or not. List this case
on 20.9.02.

Ans

Retype on
next page

(S.L. Sawant)
M(T)

(B.N. Bahadur)
M(A)

Ans

31/10/2002

Applicant by Shri G.K. Masand.
Respondents by Shri R.R. Shetty.

Notice was issued on
9/8/2002 in this contempt petition.

On 17/10/2002, an affidavit
was filed on behalf of
Contender respondents, that
the order has been complied

with.
Counsel for Applicant states
that judgement has been
complied with and applicant
has no grievance.

In the aforesaid circumstances
we discharge the notice and
drop the proceedings.

Contempt Petition is disposed of.

B. O. Court

(B. Dikshit)
V.C.

Shanta
(Smt. Shanta Shetty)
M(A)

gdp

31/10/2002
order/Judgment despatched
to 20/11/2002

8/1/02
Order