

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH.

ORIGINAL APPLICATION NO. : 1149 of 1993.

Dated this Friday, the 21st day of January, 2000.

Shri K. Vasudevan, Applicant.

Shri Suresh Kumar, Advocate for the  
applicant.

VERSUS

Union of India & Others, Respondents.

Shri R. K. Shetty, Advocate for the  
Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).  
Hon'ble Shri S. L. Jain, Member (J).

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other Benches  
of the Tribunal ? No
- (iii) Library. No

B. N. Bahadur  
(B. N. BAHADUR)  
MEMBER (A).

OS\*

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1149 of 1993.

Dated this Friday, the 21st day of January, 2000.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).  
Hon'ble Shri S. L. Jain, Member (J).

Shri K. Vasudevan,  
Assistant Accounts Officer,  
O/o. the Controller of Defence  
Accounts (Officers),  
Pune - 411 001.  
Residing at -  
36/3, Vastu Udyog, Pimpri,  
Pune - 411 018.

...

Applicant.

(By Advocate Shri Suresh Kumar)

VERSUS

1. The Secretary to Govt. Of India,  
Ministry of Finance (Defence),  
South Block, DHQ P.O.,  
New Delhi - 110 011.
2. The Controller General of Defence  
Accounts, West Block-V,  
R. K. Puram,  
New Delhi - 110 062.
3. The Controller of Defence Accounts  
(Officers),  
Golibar Maidan,  
Pune - 411 001.
4. Shri A. D. Dattar,  
Accounts Officer,  
O/o. the Controller of Defence  
Accounts (Northern Command),  
BR SECT, B-C Road,  
Jammu Cantt - 144 003 (J & K).



...2

5. Shri S. Kannan,  
Accounts Officer,  
O/o. the Controller of Defence  
Accounts (Northern Command),  
BR SECT, B-C Road,  
Jammu Cantt - 144 003 (J&K).

... Respondents.

(By Advocate Shri R.K. Shetty for  
Respondent Nos. 1 to 4).

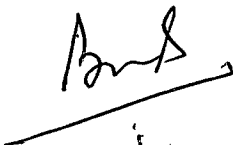
OPEN COURT ORDER

PER : Shri B. N. Bahadur, Member (A).

This is an application made by Shri K. Vasudevan seeking the relief in substance from this Tribunal for a direction to the respondents to give effect to the promotion of the applicant to the post of Accounts Officer w.e.f. 22.12.1992.

2. The facts of the case, as put forth by the applicant, are that the applicant who was working as Assistant Accounts Officer in the office of Respondent No. 3 (R-3), has the grievance that he has been superseded by Respondent No. 4 and 5, who are his juniors when the latter were promoted in December, 1992. The applicant avers that the post of Accounts Officer is a non-selection post and is to be filled in on seniority-cum-fitness basis and outlines the procedure of consideration for promotion. The applicant contends that the rules indicate that, in the D.P.C., an officer should be categorised as 'fit' or 'not yet fit' on the basis of assessment of records, etc. He highlights the facts that the word 'average' has been clarified in para 6.1.4 of Government instructions regarding promotions and makes the point that the Government has

...3



clarified that while 'average' may not be taken as an adverse remark, it cannot be regarded as complementary and thus it will come to be seen as routine and undistinguished. The applicant questions the assessment made in D.P.C. and also alleges that his representation has not been properly considered. It is with these grievances that the applicant has approached before us in this O.A.

3. Respondents have filed a written statement in reply, where it is stated that the applicant was duly considered by a properly conducted D.P.C. which met on 24th and 25th of September, 1992. He was not found fit for promotion by the D.P.C. and his case is devoid of merits.

4. The respondents go on to explain that as per the Defence Accounts Department Recruitment Rules, 1992, for the post of Accounts Officer, it is envisaged that 1/3rd of the post should be filled up by selection method and the remaining 2/3rd on the basis of seniority-cum-fitness. It is stated that the applicant was eligible for the latter method (However during arguments and perusal of records, we found that applicant was indeed considered under both methods. We shall refer to the record and the result a little later).

Bont

5. We have heard the Learned Counsel on both sides. The Counsel for applicant took us over the facts in the case and quite fairly stated that it would be crucial in this case that the Tribunal goes through the original record and that he would be satisfied on whatever conclusion that is drawn after the record has been perused. Thus, he rested his case on the Tribunal's perusal of the record. He highlighted the fact that even if he was not due for promotion under the selection method, the applicant had to be promoted if he was found to be 'Good', under the non-selection procedure. He referred to Government instructions in para 6.3.1 regarding Guidelines on Departmental Promotion Committees, cited the judgement at A.I.R. 1992 (2) CAT 178 ..(para 10) and 1998 SCC (L&S) 1656 in support of his arguments.

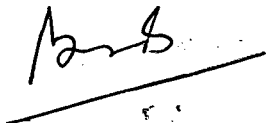
6. The Learned Counsel for the respondents, Shri R. K. Shetty argued the case by first reiterating the facts that applicant was considered by a properly constituted D.P.C. He cited the following cases in his support :

- i. Anil Katiyar V/s. Union of India & Others reported in 1997 SCC (L&S) 728.
- ii. State of H.P. V/s. S. K. Mohindra reported in 1997 SC SLJ 137.

7. In the background of the facts and circumstances of the case, as also the assertions fairly made by the Learned Counsel

B.S.

for the applicant, we have proceeded to look into the D.P.C. records and other records produced before us by the Learned Counsel for the respondents. We have gone through them in detail with the assistance of the Ld. Counsel, Shri R. K. Shetty. In the first instance, we find that the minutes of the D.P.C. indicate that the applicant, alongwith many others, has been considered under both selection and non-selection method. He has not been found fit in either. A few facts were brought out by Counsel for respondents and not much discussions are needed to come to the conclusion that no interference is necessary in the matter of non-selection of the application in the "selection method". While, as stated above, we have gone through the records in detail, we are not bringing out many facts of the confidential proceedings here, for obvious reasons, but find that even under the non-selection method, the applicant has been found 'not yet fit'. We find that he has been graded separately for five different years in the same manner like that of other candidates. His gradings are 'Good' for three years and 'average' for two of them. Now the point made by the counsel for the applicant was that from this fact it must be concluded that the officer has been graded as 'Good' overall, and in view of the instructions on the subject, he had therefore to be promoted in the non-selection part of the promotion exercise, since he should in fact be graded as "Good".

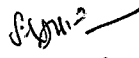



8. It is settled law that Tribunals will not proceed to reassess the gradings of officials in the manner as if it was sitting as an Appellate Authority. Also, D.P.Cs. are authorised to set up their own procedure. None of the judgements cited can lead us to a different view. Here it will be very difficult to conclude that this Tribunal can come to the conclusion that the applicant has to be graded as 'Good' overall necessarily only because of the type of gradings as described above, in the five years period. The D.P.C. has found him not fit and the words 'not fit' are not clearly endorsed in the original record. Whether we feel otherwise or not, we cannot go in and substitute our view on Grading in view of settled law.

9. One important aspect we did go into, and that was a general perusal of the assessment with a view to see if there was any obvious case of any other official in the list, manifestly graded lower than the applicant and yet selected. We could find no such case and, therefore, the decision does not suffer from arbitrary action or discriminatory action. (It has been brought to our notice that the applicant was later promoted w.e.f. 03.01.1994 as a consequence of D.P.C. held on 15th and 16th November, 1993. Further, the officer has superannuated in the meanwhile).



10. In view of the discussions made above, we do not find any ground for our interference in the case. This application is, therefore, dismissed. There will be no order as to costs.

  
(S. J. JAIN)  
MEMBER(J).

  
\_\_\_\_\_  
(B. N. BAHADUR)  
MEMBER (A).

OS\*