

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 31.01.2000

OA No.173/97

Mahendra Kumar Malviya S/o late Shri Kailash Nath Malaviya, at present working on the post of Manager, Officer Incharge, Military Farm, Jaipur.

.. Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, Government of India, New Delhi.
2. Dy. Director General Military Farm, West Block-3, Wing-7, R.K.Puram, New Delhi.
3. Director Military Farm, Headquarter Southern Command, Military Farm Branch, Kirkki, Pune.
4. Commandant Headquarter 61, Independent Sub-Area, Jaipur.
5. Shri Y.S.Jackrey, presently working on the post of Manager, Military Farm, Beng Dubi Assam, C/o 56 APO.

.. Respondents

Mr.Shiv Kumar, counsel for the applicant

Mr. M.Rafiq, counsel for the respondents

CORAM:

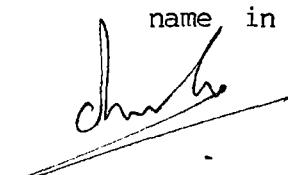
Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

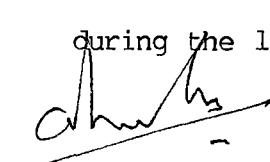
The applicant in this case seeks quashing of the order of promotion dated 3.4.1997 (Ann.A1) so far as it relates to respondent No.5 and further that respondents be directed to consider the name of the applicant for promotion on the post of Farm Officer by inclusion of his name in the said promotion order in place of respondent No.5 with



consequential benefits.

2. The facts of the case, as stated by the applicant, are that the applicant was promoted to the post of Farm Manager on 14.6.1982 and his service in the said post has been satisfactory, unblemished; that respondent No.5 is junior to the applicant and promoted to the post of Manager, Military Farm on 31.1.1983; that the applicant is senior to respondent No.5 is also established by the seniority list (Ann.A4) in which the applicant is at SL.No.7 whereas the respondent No.5 is at Sl.No.10; that in the year 1996-97, four vacancies of the post of Farm Officer were available to be filled up by promotion from amongst Farm Managers on the basis of seniority-cum-merit; the applicant was fully eligible and qualified; that a DPC malafidely did not consider the name of the applicant properly and as such he was not selected while his junior Shri Y.S.Jackrey (respondent No.5) was selected and promoted vide impugned order dated 3.4.97 (Ann.A1).

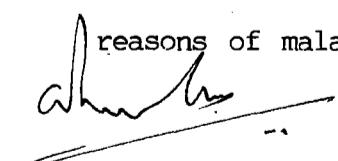
3. The case of the applicant is that the DPC had not followed the guidelines as set out in Govt. of India notification No. 1258/89/D(Appts.) dated 7.4.1989, the relevant portion, para 2.2.1 of which has been reproduced by the applicant in this application. It has been contended by the applicant that his service record is better than that of Shri Jackrey who has a poor record of management in the service and that he was chargesheeted for misbehaviour with senior, loss of ^{REVENUE} ~~STATE~~ ^{OFFICE}, negligence of duty, absence from duty without leave etc. According to information available with the applicant some charges are still under investigation and in some the respondent No.5 was awarded punishment. It has also been alleged that there were adverse entries in the ACR of respondent No.5 for the year 1991-92 and he was also blamed for absence from duty without leave during 1992-93. On the other hand, the applicant have never been served any kind of chargesheet and has never been communicated any adverse remarks during the 15 years of service as Manager, Military Farm which could have



interferred with his promotion. However, as a result of misunderstanding by the Station Commander, Headquarter, 61. Sub-Area some remarks "involved only in supply of fodder at times the supply has not been satisfactory, leading to complaints from unit" were written and communicated to him during 1994-95 (Ann.A6 and A7). The Station Commander who wrote the said remarks as reviewing officer had himself inspected the Unit during 1993-94 and 1994-95 has given satisfactory report for the period 1994-95 and, therefore, the adverse remarks written by him are contradictory to the report already given by him (Ann.A8 and A9). It has also been contended the there was no complaint by any fodder consuming unit against the management of Military Farm, Jaipur. In fact, the Hay received by Jaipur Farm from Military Farm, Tornagallu and Bangalore was not fit for issue out on which the Station Board was ordered and fodder was issued after sorting out and rebailing to the consuming unit which should be considered as an achievement by the applicant by which he saved about Rs. 10 lacs of the Government and, therefore, the adverse remarks made by the Station Commander were not of such nature which could be used against the applicant while he had much better record in comparision to respondent No.5

4. Respondents have filed a reply opposing the applicant. It has been contended on behalf of the respondents that the case of the applicant vis-a-vis his junior was considered on the basis on their respective service records. The recommendations were made by the DPC strictly on the basis of performance of each candidate as reflected in ACRs, disciplinary status, integrity etc. According to the instructions, ACRs/records of 5 years immediately preceding were taken into consideration and on overall assessment, while Shri Jackrey was recommended for promotion having been graded as 'very good', the applicant was not so recommended since he was graded only as 'average'. The respondents have, therefore, denied that supersession of the applicant have been in violation of rules or for any reasons of malafide. It has also been stated by the respondents that the

claims of the



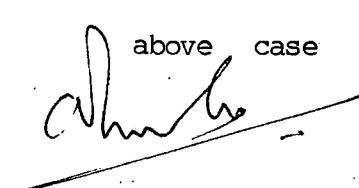
(12)

performance of the applicant has always been just average and he had earned adverse remarks in his ACR for the year 1995-96 which were communicated and against such adverse remark, his representation/appeal was also considered and rejected by the QMG, Army Headquarters, New Delhi. The respondents have also denied that any chargesheet was served on Shri Jackrey for misbehaviour with seniors and that he failed to exercise proper command and control as Manager of the Farm.

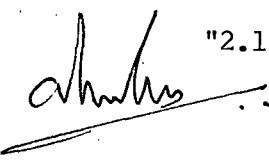
5. Rejoinder has also been filed by the applicant. It has been stated therein that the impugned order itself reveals that the disciplinary status was not considered in the DPC and that it was wrong to say that the applicant has adverse remarks in his ACR for the year 1995-96 and that the DPC arbitrarily graded the applicant as 'average' and respondent No.5 as 'very good'. It has also been reiterated that S/Shri Jagtar Singh and S.K.Malviya were chargesheeted and punished.

6. We have heard the learned counsel for the parties and have carefully perused the records.

7. The short controversy in this case is whether the DPC was correct in assigning an overall grading of average to the applicant based on one 'adverse' remark in respect of the year 1994-95 and 'very good' to respondents No.5 and whether in a promotion based on seniority-cum-merit a senior can be superseded by juniors unless he is found unsuitable by the DPC. The learned counsel for the applicant, in support of his contentions cited the case of Bal Kishan Vs. District and Session Judge, Pali and Anr. reported in 1998 (2) WLC 757 in which it has been held that in case of promotions based on seniority-cum-merit, it was not permissible to reject the claim of the petitioner for promotion only on the ground that Annual Appraisal Report of the petitioner for one year was not satisfactory. The above case cited by the learned counsel for the applicant is



distinguishable in view of the fact that the petitioner therein had only one year's Annual Appraisal Report which was not satisfactory and it was, therefore, held that it was not permissible for respondents to reject the claim of the petitioner for promotion on the basis of only one year's Annual Appraisal Report being not satisfactory. In the present case, however, the respondents have stated that the performance of the applicant has always been just average and he has earned adverse remarks in his ACR for the year 1995-96. We have no reason to disbelieve the respondents when they state that the performance of the applicant had always been just average. As regards the adverse remarks in his ACR for the year 1995-96, it is quite clear that these were communicated to the applicant and his representation/appeal was also considered and rejected by very senior officer of the Army viz. QMG, Army Headquarters. Thus, the adverse remark in his ACR for 1995-96 has not been expunged and has remained as part of his ACR. The applicant who is holding a post of Military Farm Manager is holding much more important post than the Lower Division Clerk which was the petitioner in the case cited by the learned counsel for the petitioner. The promotion to the post of Farm Officer was to a post which is having still higher responsibilities and it cannot be accepted that the minimum standard of performance for promotion to the post of Farm Officer can be average efficiency, specially when the applicant is serving in a organisation which provide important support to the Army. Further, the applicant did have an adverse ACR for one year which must have been taken note by the DPC while recommending panel for promotion to the post of Farm Officer. The applicant has also mentioned about notification dated 7.4.89 issued by the Government of India but has not enclosed a copy thereof. On the other hand, Department of Personnel and Training in their OM No. F.22011/5/86-Estt.(D) dated 10.3.1989 has issued detailed guidelines as to what are the implications of the average performance. It will be useful to extract para 2.1.4 of the said notification:


"2.1.4 Government also desires to clear the misconception about

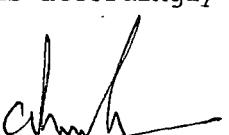
M

'Average' performance. While 'Average' may not be taken as an adverse remark in respect of an officer, at the same time, it cannot be regarded as complimentary to the officer, as 'Average' performance should be regarded as routine and undistinguished. It is only performance that is above average and performance that is really noteworthy which should entitle an officer to recognition and suitable rewards in the matter of promotion."

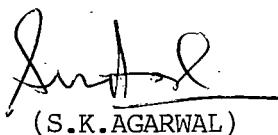
8. It is the settled law that the Tribunal cannot sit as an appellate authority over the assessment made by the DPC. In the present case also there is no reason for us to go into the question whether the DPC had incorrectly given the overall grading of 'average' to the applicant whereas it had graded respondent No.5 as 'very good'. In any case, the respondents have stated that the performance of the applicant has always been just average. To compound the matter of the applicant, he did earn some adverse remarks in his ACR for the year 1995-96 which were not expunged even after these were communicated to the applicant and he had made representation/appeal.

9. In view of the above discussions, the applicant has not been able to make out a case that the grading of 'very good' assigned by the DPC to respondent No.5 should be modified and the promotion given to respondent No.5 should be declared illegal and unjustified and should be quashed and that the applicant should be promoted to the post of Farm Officer in place of respondent No.5

10. We, therefore, find no justification for interfering with the impugned order dated 3rd April, 1997 (Ann.A1) and the Original Application is accordingly dismissed with no order as to costs.



(N.P. NAWANI)
Adm. Member



(S.K. AGARWAL)
Judl. Member