

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,  
JABALPUR

Original Application No.480 of 2009  
&  
Civil Contempt Petition No.22 of 2009

Jabalpur, this Tuesday, the 26<sup>th</sup> day of February, 2013

Hon'ble Mr. Justice Dharendra Mishra, Judicial Member  
Hon'ble Mr. G.P.Singhal, Administrative Member

Original Application No.480 of 2009

P.R. Sagar, S/o. Shri R.M. Sagar,  
Aged about 65 yrs, Retired as A.C.D.A.,  
Controller of Defence Accounts Ridge Road,  
Jabalpur, R/o. New Basti, Kajarwara,  
Post Temarbhitia, Jabalpur (M.P.).

-Applicant

(By Advocate – Shri A.P. Singh)

Versus

1. Union of India, Through: The Secretary,  
Department of Defence, New Delhi.

2. Controller General Defence Accounts,  
R.K. Puram, New Delhi.

3. Controller Defence Accounts,  
Ridge Road, Jabalpur (M.P.).

4. K. Muniyandi, Asstt. Controller of Finance  
& Accts., HFV, Avadi.

- Respondents

(By Advocate –Shri S.K. Mishra)

Civil Contempt Petition No. 22 2009

P.R. Sagar, S/o. R.M. Sagar, Aged about : 62 years,  
R/o. New Basti, Kasarwara,  
Temerbhicta, Jabalpur (M.P.).  
(By Advocate – Shri A.P. Singh)

-Petitioner

Versus

1. Shri Vijay Singh, Secretary,  
Ministry of Defence, Govt. of India, New Delhi.



2. Smt. Bulbul Ghosh, Controller General of Defence Accounts, R.K. Puram, New Delhi.

3. Shri Jai Pal Singh, Controller of Defence Accounts, Ridge Road, Jabalpur (M.P.).

- Respondents

(By Advocate -Shri S.K. Mishra)

Common Order

By Dhirendra Mishra, JM.-

This is the second round of litigation. Applicant's earlier Original Application No.416/2002 was partly allowed vide order dated 29.09.2004 with a direction to the respondents to convene a review Departmental Promotion Committee (for brevity 'DPC') to consider the case of the applicant for promotion in the Junior Time Scale (for brevity 'JTS') of Rs.8000-13500/- with effect from 01.01.2001 and if found fit grant him all consequential benefits within a time frame. The Tribunal's order was further affirmed by the Hon'ble High Court as also by the Hon'ble Supreme Court as Writ Petition No.67/2005 (S) and SLP No.22225/2007 filed by the respondents were dismissed vide orders dated 27.02.2007 and 5.9.2008 (Annexures A-5 & A-6 respectively).

2. In compliance of the aforesaid order, review DPC convened on 25.5.2009, reconsidered the applicant and did not recommend him for promotion with an observation that sufficient number of officers having higher/similar assessment and who were senior to him, have already become available to fill up the vacancies reported for the year 2000-2001. Learned counsel for the applicant vehemently argued that from perusal of para 5 of the order passed by this Tribunal in OA No.416/202 (Annexure R-4), it would be evident that in his Annual Confidential Report (for brevity 'ACR') for the year 1999-2000 he has been graded as 'very good', which has been accepted by the accepting authority; for the year 1998-1999 also he was graded by the reporting officer as 'very good' officer, but the accepting authority has down graded his ACR to 'average', however, the Tribunal has directed the ACR for that period be treated as 'very good' as reported by the

reporting officer; the ACR for the year 01.04.1997 to 24.10.1997 has been recorded by the reporting officer as 'average' and the same has been accepted by the accepting authority, however, this ACR was never communicated to the applicant and, therefore, the same could not be considered for the purposes of promotion by the DPC; for the period from 31.10.1996 to 31.3.1997 the applicant was rated as 'good' but again the accepting authority downgraded him to 'average', however, the Tribunal directed the same to be treated as 'Good'; ACR for the period from 01.04.1996 to 31.10.1997 the reporting officer graded him as 'very good', which has been accepted by the accepting authority, for the period from 01.04.1995 to 31.01.1996 the applicant has been graded as 'good' and the same has also been accepted by the accepting authority; for the period from 01.04.1994 to 31.03.1995 he has been rated as 'good' by both the authorities. Thus, considering that during the period from 1994-95 to 1999-2000 the applicant has been rated at least 'good' in all these years and he has also been rated as 'very good' for certain period, he was entitled for being considered for promotion as per instructions dated 27.3.1997, wherein it is stipulated that for promotion for all Group C, Group B and Group A posts (up to and excluding the level of Rs.3700-5000) the bench mark would be 'good' and will be filled by the method of selection-cum-seniority as indicated in sub para (iii). The Tribunal partly allowed his Original Application and directed to convene a review DPC to consider the case of the applicant afresh. However, the respondents rejected the claim of the applicant for promotion vide order dated 15.6.2009 (Annexure A-8) with an observation that the review committee did not recommend his case for promotion as sufficient number of officers having higher/similar assessment and who are senior to the applicant have already become available to fill up the vacancies reported for the year 2000-2001.

3. Learned counsel for the applicant submits that in the review DPC his case was considered on the basis of old and uncommunicated gradings in his ACRs and the respondents, without complying with the orders passed by this

Tribunal and without changing his grading in the ACR convened the review DPC and thereby denied him promotion, which is illegal, and respondents ought to have promoted the applicant.

4. On the other hand learned counsel for the respondents raised a preliminary objection that DPC is convened by the Union Public Service Commission (for brevity 'UPSC') for promotion from Group-B to Group-A i.e. JTS of Indian Defence Accounts Service (for brevity 'IDAS'), hence UPSC is a necessary party, however, the applicant has not impleaded UPSC as a party, hence the Original Applicable is liable to be dismissed for non-joinder of necessary party.

5. The respondents have further submitted that the promotion from the post of Sr. Accounts Officer to the JTS of IDAS in the post of ACDA are governed by Rule 7(ii) read with Rule 10 of IDAS Rules, 2000 (hereinafter referred to as 'the IDAS Rules') (Annexure R-1). The method of recruitment by promotion to JTS is specified in Schedule II to the IDAS Rules, in which applicant's case falls against serial No.8 of Schedule-II, and the method is 'selection by merit'. The promotion is to be made on the recommendations of the DPC, comprising Chairman/Member of the UPSC as one of the Member with other Members, who are senior officers from the Ministry/ Department equivalent to the Joint Secretary and above. Referring to Para 6.3.1 of the guidelines dated 10.4.1989 (Annexure R-2) it was submitted that the benchmark for the post in question was 'good', and all those officers which are equal to or better than the bench mark were to be included in the panel for promotion to the extent of number of vacancies and they were to be arranged in the order of their inter se seniority without reference to overall grading by each of them, provided that each of them has an overall grading equal to or better than the benchmark of good. The DPC was held on 28.11.2000, 29.11.2000 and 1.12.2000 to consider the fitness of officers for filling up 49 (44 + 5) vacancies (All general). Accordingly, 115 officers were considered by the DPC, out of which 13 officers had already

been empanelled and remaining 102 officers were assessed by the DPC, amongst 102 officers, two officers were assessed as 'outstanding', 40 officers as 'very good', 51 officers as 'good' and 5 officers as 'average' grading were considered. The DPC recommended the empanelment of two officers with outstanding grading, 40 officers with very good grading and 7 officers with good grading from the main panel and 22 officers of good grading from the extended panel. Out of 51 officers assessed as 'good', only 29 officers in the order of their inter se seniority have been empanelled for promotion during the year. The 30<sup>th</sup> to 51<sup>st</sup> officers including the applicant who is 49<sup>th</sup> officer though assessed as good were not empanelled for want of sufficient number of vacancies. Considering all these aspects the review DPC did not recommend the applicant for promotion as sufficient numbers officers who were senior to him were available to be empanelled to the DPC for the relevant year, though the committee assessed him as good.

6. Heard learned counsel for the parties and perused the pleadings of the respective parties and the documents annexed therewith.

7. The main grievance of the applicant is that in the earlier round of litigation the Tribunal disapproved the downgrading of the applicant by the accepting authority and accordingly restored his grading in the ACR as recorded by the reporting authority as follows:-

Year	Grading by IO	Grading by RO
1999-2000	Very Good	Very Good
1998-99	Very Good	Very Good
1997-98	Very Good	Average
1997-97	Average	Average
1996-97	Good	Average
1996-96	Very Good	Very Good
1995-96	Good	Good

Contention of the applicant is that the respondents failed to comply with the order of the Tribunal and correct grading in his ACR as directed by this Tribunal and because of this non-compliance the committee did not recommend him for promotion in review DPC held on 25.05.2009.

8. We have carefully examined earlier order passed by this Tribunal and we find that there is no direction to the respondents to make suitable amendment in the grading of his ACRs and it has been simply observed that the downgrading by the accepting authority should be treated as upgraded as per grading of the reporting authority. From perusal of the minutes of the review DPC held on 25.5.2009 (Annexure R-5), in compliance of the order passed by this Tribunal, it is clear that the order passed by this Tribunal has been duly considered by the Committee and the excerpts of the orders of the Tribunal find reference in the minutes of the review DPC. The review DPC has reconsidered the applicant at serial no.105 of the eligibility list for the year 2000-2001 and after examining his character rolls the committee has again assessed him as 'good'. The committee did not recommend him. The respondents have categorically stated in their counter reply and the same finds mention in the recommendations of the review DPC that sufficient number of officers having higher/similar assessment and who were senior to the applicant were available to fill up the vacancies reported by the Ministry for the year 2000-2001 and, therefore, the Committee did not recommend the applicant for promotion. The above pleadings in the Counter Reply, which are the observations made in the minutes of the review DPC, have not been controverted by the applicant in his Rejoinder filed on 18.3.2010. The relevant rules governing promotion are reproduced as under:-

"6.3.1 The list of candidates considered by the D.P.C. and the overall grading assigned to each candidate would form the basis for preparation of the panel for promotion by the D.P.C. The following principles should be observed in the preparation of the panel:-

(i) 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 bench-mark grade would be determined for each category of posts for which promotions are to be made by selection method. For all Group

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W/1109/2007 & W/12/2009

'C' Group 'B' and Group 'A' posts up to (and excluding) the level of Rs.3700-5000 excepting promotions for induction to Group 'A' posts or Services from lower groups, the bench-mark would be 'Good'. All officers whose overall grading is equal to or better than the bench-mark should be included in the panel for promotion to the extent of the number of vacancies. They will be arranged in the order of their inter se seniority in the lower category without reference to the overall grading obtained by each of them provided that each one of them has an overall grading equal to or better than the bench-mark of 'Good'.

Wherever promotions are made for induction to Group 'A' posts or Services from lower groups, the bench-mark would continue to be 'Good'. However, officers graded as 'Outstanding' would rank en bloc senior to those who are graded as 'Very Good' and officers graded as 'Very Good' would rank en bloc senior to those who are graded as 'Good' and placed in the select panel accordingly up to the number of vacancies, officer with same grading maintaining their inter se seniority in the feeder post".

9. On close examination of aforesaid rules we are of the opinion that the case of the applicant for promotion to JTS of IDAS has been considered strictly in accordance with the relevant rules quoted above, after duly considering the directions of this Tribunal. The respondents have categorically stated in their counter reply and the minutes of the review DPC also mentions that sufficient number of officers having higher/similar assessment and who were senior to the applicant were available to fill up the vacancies reported by the Ministry for the year 2000-2001 and, therefore, the committee did not recommend the applicant for promotion. The above pleadings in the counter reply has not been controverted by the applicant in this rejoinder.

10. It is settled law that DPC is not required to be guided merely by the overall grading, if any, that may be recorded in CRs but to make its own assessment on the basis of the entries in CRs, and that DPC enjoyed full discretion to devise its method and procedure for objective assessment of suitability and merit of the candidate being considered by it, (See : *Union of India v. S.K. Goel*, (2007) 14 SCC 641).


11. In the matters of *M.V. Thimmaiah v. Union Public Service Commission, (2008) 2 SCC 119*, the Hon'ble Supreme Court has held that "normally, the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an Appellate Authority to examine the recommendations of the Selection Committee like the court of appeal. This discretion has been given to the Selection Committee only and courts rarely sit as a court of appeal to examine the selection of the candidates nor is the business of the court to examine each candidate and record its opinion".

12. The counsel for the applicant could not show any violation of rules quoted above while his case was reconsidered for promotion.

13. Accordingly, we do not find any merit in this Original Application. The same deserves to be and is accordingly dismissed, however, without any order as to costs.

14. In view of the above findings we find no substance in CCP No.22/2009 filed by the applicant on the allegation of willful violation of the orders of this Tribunal.

15. In the result, both the Original Application and Civil Contempt Petition are dismissed, however, without any order as to costs.

  
(G.P. Singhal)  
Administrative Member

  
(Dharendra Mishra)  
Judicial Member