

Central Administrative Tribunal
Jabalpur Bench

OA No. 770/05

Jabalpur, this the 31st day of October 2006.

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Mr.A.K.Gaur, Judicial Member

D.P.Thakur
Son of late Shri Sumet Singh Thakur
Retired as Draftsman Division No.1.
R/o 980, Shiv Mandir Compound
Gangasagar
Talav Garha Road
Jabalpur. Applicant

(By advocate Shri Bhoop Singh)

Versus

1. Union of India
through its Secretary
Ministry of Science & Technology
New Delhi.
2. The Surveyor of India
Office of Dehradun
Uttaranchal.
3. The Director
Central Circle Survey of India
Jabalpur. Respondents.

(By advocate Shri S.K.Mishra)

ORDER

By A.K.Gaur, Judicial Member

The applicant has filed this OA for quashing promotion orders dated 14.9.2000, 2.5.01, 18.10.01 and 27.7.05 (A-2, A-3, A-8 and A-12 respectively) and for directing the respondents to consider promotion of the applicant to the post of Chief Draftsman, with consequential benefits. He has also prayed for a direction to the respondents to review the DPC held for promotion of the applicant.

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2. The case of the applicant, in brief, is that initially the applicant was appointed on the post of T.T.T.B.Draftsman in 1964. By dint of satisfactory performance and on the basis of trade tests, the applicant received a number of promotions during his service and he retired on superannuation as Draftsman Grade I from the office of Survey of India. The main grievance of the applicant is though he was considered for promotion to the post of Chief Draftsman (Gazetted Gr.B) by the Departmental Promotion Committee held for 35 posts of Chief Draftsmen on 9.9.2000, he was not recommended by the DPC as his relevant ACRs did not carry the required bench mark of "Good". Instead the relevant ACRs carried "Average" grading. Thereafter, two more DPCs were held on 10.4.2001 and 5.3.2002 for filling up of 17 and 13 vacancies respectively and on both the occasions, the applicant was not recommended by the DPCs for promotion to the post of Chief Draftsman. The applicant agitated his grievance in an earlier OA No.481/01 before this Tribunal. This OA was disposed of with a direction to consider his representation. Alleging that the representation of the applicant was disposed of by the respondents by a non-speaking order, he again filed OA No.766/01, which was disposed of by the Tribunal vide order dated 19th November 2003, thereby quashing the non-speaking order of the respondents dated 18.10.2001 and directing the respondents to communicate the downgraded remarks mentioned in the relevant ACRs to the applicant and thereafter to hold a review DPC in accordance with rules and instructions on the subject. The respondents challenged the order of the Tribunal before the High Court in WP No.3141/04. The High Court upheld the order of the Tribunal and granted three months' time to the respondents to implement the order. In the meantime, the applicant filed a contempt petition before the Tribunal and this contempt petition was dismissed as infructuous, stating that the order of the Tribunal as well as of the High Court were complied with and the down-graded remarks in the ACR of the applicant were communicated to him and that the applicant did not make any representation against the adverse remarks. Thereafter the applicant

submitted a representation dated 14.6.05 which, according to the applicant, has not been considered properly by the respondents. Hence the applicant has filed the present OA.

3. Respondents in their reply statement have contended that after the dismissal of the contempt petition, the applicant had submitted a representation dated 14.6.05 demanding copy of all the original ACRs of himself and other officials who were promoted vide DPCs held on 14.9.2000 and 2.5.2001. Respondent No.2 had given a reply to this representation vide letter dated 14.7.2005. As per Government of India's instructions, there is no provision for giving copy of all the ACRs to affected individual. Only adverse entries are to be communicated. Therefore, the downgraded remarks were only communicated to him as per direction of the Tribunal. The applicant was given ample opportunity to represent against the downgraded entries but he failed to do so. His representation dated 14.6.05 did not speak anything about the downgraded remarks. As per rules, DPC shall grade officers as fit or unfit only with reference to the benchmark of 'Good'. Only those who are graded fit shall be included in the select panel prepared by DPC in order of their inter-se seniority in the feeder grade. The name of the applicant had been considered by the DPCs held on 9.9.2000, 10.4.2001 and 5.3.2002 for promotion to the post of Chief Draftsman. But since the gradings ⁱⁿ his ACRs were not up to the benchmark, the DPCs had not found him fit for promotion to the post of Chief Draftsman. For concessions in the matters of promotion for candidates belonging to SC/ST by way of lowering qualifying marks, lesser standards of evaluation, the DoPT OM No.36012/23/96-Estt (Res) Vol.II dated 3.10.2000 was issued but the orders shall take effect in respect of selections to be made on or after the date of issue of the OM. Thus no relaxation to the applicant, who belongs to ST, could be given. The OA deserves to be dismissed, contend the respondents.

4. Having heard the learned counsel on either side, we are of the view that the DPC has acted strictly in accordance with rules and guidelines issued from time to time. The DPC was held on 9.9.2000

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for 35 posts of Chief Draftsman, the break up was 28 for General, 5 for SC and 2 for SC. The applicant belongs to ST category. 3 ST candidates were senior to the applicant and placed above his name in the panel. The name of the applicant was at Sl.No.14 in the seniority list and his name was considered along with other but he could not find place in the select list due to his grading below the benchmark. The post was to be filled on selection-cum-seniority basis and the benchmark required for promotion was 'good'. No relaxation of ST category could be given to the applicant in the said DPC. Again on 10.4.2001 the DPC was held for promotion to 17 posts of Chief Draftsman and the DPC for the year 2002 was held on 5.3.2002 for 13 post of Chief Draftsman. The name of the applicant was at Sl.No.1 in both the DPCs but again, due to grading below the benchmark he could not find place in select list. There was no vacancy reserved for ST candidates in the said DPCs. Moreover, the applicant has failed to represent against his downgrading within the time frame given by this Tribunal and it was presumed that ~~that~~^{the} applicant accepted all the remarks made in the ACRs. The representation of the applicant dated 14.6.05 has already been considered by the Surveyor General of India and this fact was intimated to him vide letter dated 14.7.05. As per rules, if the ACR grading is below the benchmark and not adverse it is not required to be communicated. Only adverse remarks are to be communicated. In the present case, in pursuance of the order of the Tribunal and High Court, respondent No.2 has communicated the downgrading remarks to the applicant and granted liberty to represent against the same but he failed to do so. As such he has no case. It appears that the grievance of the applicant has already been redressed. Hence the OA is liable to be dismissed. Accordingly the OA is dismissed. No order as to costs.

A.K. Gaur
(A.K. Gaur)
Judicial Member

G.C.S.
(Dr. G.C. Srivastava)
Vice Chairman