

Central Administrative Tribunal
Jabalpur Bench

OA No.337/04

Whereas, this the 13th day of September, 2005.

C O R A M

Hon'ble Mr.M.P.Singh, Vice Chairman

Hon'ble Mr.Madan Mohan, Judicial Member

Girish Kumar Bhatnagar
S/o Late Gyaneshwar Prasad Bhatnagar
Inspector of Central Excise
Commissionerate Indore.

Applicant

(By advocate Shri Akash Sharma)

Versus

1. Union of India through
Secretary
Ministry of Finance
North Block
New Delhi.
2. Commissioner
Customs and Central Excise
Manik Bagh Place
Indore (MP)

Respondents.

(By advocate Shri K.N.Pethia)

O R D E R

By Madan Mohan, Judicial Member

By filing this OA, the applicant seeks a direction to the respondents to promote him from the date his juniors are promoted.

2. The brief facts of the case are that the applicant is working as Inspector of Central Excise under respondents since 2.8.1982. On the basis of a DPC held in the month of September 2002, a number of officers, junior to him were promoted to the grade of Superintendent of Central Excise Group-B vide order dated 23.9.02. A few junior officers have further been promoted by respondent No.2. The




applicant vide letter dated 23.12.2003 (Annexure A1) represented his case before respondent No.2. Respondent No.2 vide letter dated 24.2.2004 informed the applicant that he could not be promoted to the grade of Superintendent Group-B as he was found unfit on the basis of ACR gradation by the DPC held on 23.7.2003 and 10.4.2003 (Annexure A2). Being aggrieved, the applicant has filed this OA.

3. Heard learned counsel for both parties. It is argued on behalf of the applicant that the DPC cannot rely on confidential reports toto. Cross verification from character rolls and independent assessment merit and ability is essential. Non-consideration for promotion of the applicant relying on confidential report in toto is illegal. He further argued that while the applicant had been declared fit for promotion vide DPC meeting held in December 2002 and his juniors were promoted, yet respondents had communicated to applicant vide Annexure A-II dated 23/24.2.2004 that he was not found fit on the basis of ACRs by the DPCs held on 23.7.2003 and 10.4.2003. Respondents could not show any reason as to why he was found unfit for promotion by the subsequent DPCs held on 23.7.2003 and 10.4.2003, while nothing adverse was communicated to him and there was also nothing adverse against his work. So many juniors to the applicant were promoted on the basis of the DPC held in December 2002, in which the applicant was found fit. The action of the respondents is illegal and arbitrary. Hence the applicant is entitled for the relief claimed.

4. In reply, learned counsel for respondents argued that the applicant has not made his juniors as party in the OA and hence the OA deserves to be dismissed on this ground alone. The DPC was held strictly in accordance with the instructions of the DoPT. The applicant was not found up to the mark on the basis of ACRs in the DPC held on 23.7.2003 and 10.4.2003. The Tribunal cannot sit in appeal over the DPC recommendations and re-assess the ACRs. The applicant has also not alleged any malafide against any particular officer of the Department. Hence the OA deserves to be dismissed.



5. We have heard learned counsel for the parties. We have perused the minutes of the DPC held on 24.12.2002, which supports the arguments advanced on behalf of the applicant. In this minutes of meeting, the applicant is shown as "Good" at S.No.8 as he has earned 3 excellent reports in immediately preceding years i.e. 1999-2000, 2000-2001 and 2001-2002 by two different Reviewing Officers. Prior to that he was given "Just Adequate" reports in years 1997-98, 1998-99. Hence he was assessed as "Good". We have also perused the minutes of the Review DPC dated ^{10.4.03}~~24.12.2002~~ for Promotion of Inspector, Central Excise, Group-C to the Grade of Superintendent, Gr.B in respect of Central Excise Commissionerate, Indore/Nagpur/Raipur and Bhopal held at Indore on 10.4.2003. In its Para 5 it is mentioned that 'this review DPC followed the same selection criteria as followed by the DPC held on 24.12.2002. Accordingly the criteria adopted by this review DPC for benchmark "Good" was taken as at least 4 ACRs out of ACRs of preceding 5 years i.e. 1997-98 to 2001-02 should be "Good" and there should not be any adverse report for General Category candidates. For SC/ST category candidates, the DPC followed the relaxed selection criteria for the benchmark "Good" as at least 3 ACRs out of ACR of preceding 5 years i.e. 1997-98 to 2001-02 should be "Good" and there should not be any adverse report". In its Para 6 at S.No.8 the applicant is shown as unfit. The applicant was assessed "Good" on the basis of 3 ACRs in the earlier of DPC held on 24.12.2002 while by the review DPC held on 10.4.2003 it was considered that at least 4 ACRs out of ACRs of preceding 5 years should be good. By this review DPC, the applicant was found unfit. Hence he was not promoted and was informed accordingly as alleged by the respondents.



6. As the review DPC has found the applicant unfit for promotion, we find no merit in this OA. Accordingly the OA is dismissed. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

aa.

पृष्ठान्त से ओ/व्या. जयपुर, दि.
पतिलिपि आये दिनांक :-

- (1) सचिव, उता बंधुपुल्ल वर प्रोविडेंट, जयपुर
- (2) आवेदक श्री/श्रीमती/शु. के काउंसल
- (3) प्रत्यक्षी श्री/श्रीमती/शु. के काउंसल
- (4) न्यायालय, जयपुर, जयपुर न्यायाधीश सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

A. K. Sharmar
P. V. I. N. D.
K. M. P. Singh
16-9-05
P. V. I. N. D.

Issued
16-9-05