

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 308 of 2001

Jabalpur, this the 7<sup>th</sup> day of May, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman  
Hon'ble Mr. A.S.Sanghvi, Judicial Member

Prakash Prabhakar Ambalkar  
aged about 37 years,  
S/o Shri P.W. Ambalkar  
Technical Assistant T-4  
Irrigation & Drainage Engineering  
Division, Central Institute of  
Agricultural Engineering, (CIAE)  
Nabibagh Berasia Road,  
Bhopal (M.P.) 4620038

APPLICANT

(By Advocate - Shri R.Shrivastava)

VERSUS

1. Indian Agricultural Research Institute, PUSA Campus, New-Delhi-110012 Through its Director Shri Punjab Singh.
2. Director, Indian Agricultural Research Institute, (IARI) Pusa Campus, New-Delhi.

RESPONDENTS

(By Advocate - Shri B.da.Silva alongwith Shri S.Akhtar)

O R D E R

By M.P. Singh, Vice Chairman -

By filing this OA, the applicant has sought the following main reliefs:-

"(ii) to issue a writ in the nature of mandamus commanding the respondents to promote the applicant with effect from 1.1.95 in place of 1.1.96 by modifying the impugned order dt. 5.3.2001.

(iii) to quash the impugned part of the order dt. 5.3.2001 that the assessment committee did not recommend promotion w.e.f. 01.01.95 and direct the respondents to promote the applicant w.e.f 1.1.95"

2. The brief facts of the case are that the applicant was appointed as Technical Assistant-II-3 on 18.5.1989. As per the rules, on expiry of 5 years, a report is collected with regard to the performance of the individual in the department and it is assessed by the duly constituted Assessment Committee for further promotion to next higher grade/post. The applicant was due for promotion with effect from 1.1.1995. He was not promoted with effect from the due date and learnt that

there is an adverse confidential report in his ACR for the year 1993-94. He submitted a representation and the adverse remarks were expunged by the Director vide memo dated 27.12.96 (Annexure-A-2). Since the applicant was not promoted on due date, he had filed an OA No.971/1997 before this Tribunal praying for direction to the respondents to reconsider his case by convening a review DPC on the basis of the norms of 1995 for promotion to the post of Technical Assistant T-4. The Tribunal vide its order dated 7.9.2000 directed the respondents to reconvene the meeting of the Assessment Committee and consider the case of the applicant for merit promotion to T-4 grade from the same date his juniors were promoted in 1995. The Tribunal further directed that "the Assessment Committee shall maintain the same norms. While considering the case of the applicant, the adverse remarks since expunged in the ACR for the year 1993-94 shall not be taken into consideration. In the event the applicant is found fit for promotion in T-4 grade by the Assessment Committee, he should be so promoted to the said grade w.e.f. the date his juniors were promoted. His pay in T-4 grade shall be accordingly fixed from the said date but he will not be entitled to back wages".

2.1 Accordingly, the Assessment Committee has considered the case of the applicant but it did not find the applicant suitable for promotion with effect from 1.1.1995, as he did not meet the minimum criteria laid down by the ICAR for said promotion. However, on the recommendations of the Assessment Committee the applicant has been promoted to the next higher grade with effect from 1.1.1996 vide order dated 5.3.2001. Aggrieved by this, the applicant has filed this OA.

3. Heard the learned counsel for the parties and carefully considered the rival contentions of the learned counsel for the parties. We find that the applicant was due for promotion w.e.f. 1.1.1995. There were certain adverse remarks in his ACR for the year 1993-94. These remarks were expunged vide memo dated 27.12.1996. The case of the applicant has been reconsidered by the Assessment Committee in pursuance of the directions given by this Tribunal in the earlier O.A. filed

by the applicant. The Assessment Committee has considered his case but did not find him suitable with effect from 1.1.1995. As per the reply given by the respondents, the Assessment Committee was convened on 3.3.2001 and while considering the applicant for promotion, they have ignored the adverse remarks which were expunged. The committee did not find him suitable for promotion w.e.f.1.1.1995. However, the committee has recommended him for promotion w.e.f.1.1.1996 and he has been promoted accordingly. It is the settled legal position that this Tribunal cannot substitute itself as a Selection Committee and make selection. The Hon'ble Supreme Court in the case of Union Public Service Commission Vs. Hiranyalal Dev, AIR 1988 SC 1069 has held that the power to make selection were vested with the Selection Committee under the relevant rules and the Tribunal could not have played the role which the Selection Committee had to play. The Tribunal could not have substituted itself in place of the Selection Committee and made the selection as if the Tribunal itself was exercising the powers of the Selection Committee. The Hon'ble Supreme Court in the case of State Bank of India Vs. M. Mynuddin, AIR 1987 SC 1889 has held that whenever promotion to a higher post is to be made on the basis of merit, no officer can claim promotion to the higher post as a matter of right by virtue of seniority alone with effect from the date on which his juniors are promoted. It is not sufficient that in his confidential reports it is recorded that his services are satisfactory. An officer may be capable of discharging the duties of the post held by him satisfactorily but he may not be fit for the higher post. Before any such promotion can be effected it is the duty of the management to consider the case of the officer concerned on the basis of the relevant materials.

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4. In view of the settled legal position, we cannot interfere with the assessment made by the Assessment Committee which consists of very senior officials including the scientists. Accordingly, the present OA has no merit and deserves to be dismissed.

5. In the result, the OA is dismissed, however, without any order as to costs.

A.  
(A.S.Sanghvi)  
Judicial Member

MPS  
(M.P.Singh)  
Vice Chairman

ekv.

पृष्ठांकन सं. ओ/न्या.....जबलपुर, दि.....  
घटिलिपि अद्योषित:—  
(1) सहिल, उच्च न्यायालय बार एसोसिएशन, जबलपुर  
(2) आवेदक श्री/श्रीमती/कु.....के वार्डसल R.K. Bhawastava  
(3) प्रत्यक्षी श्री/श्रीमती/कु.....के काउंसल T.S. danliva  
(4) ग्रंथालय, केप्रा, जबलपुर न्यायपीठ  
सूचना एवं आवश्यक कार्यवाही देख  
Rajendra  
उप सचिव  
13/1/04

*Final  
22/5/04  
17.5.04*