

CENTRAL ADMINISTRATIVE TRIBUNAL  
JABALPUR BENCH

OA No.416/02

Indore, this the 29 th day of September, 2004.

C O R A M

Hon'ble Mr.M.P.Singh, Vice Chairman  
Hon'ble Mr.Madan Mohan, Judicial Member

P.R.Sagar  
S/o Shri R.M.Sagar  
Working as Senior Accounts Officer  
Central Defence Accounts  
Ridge Road, Jabalpur.  
R/o New Basti, Kajarwara  
Post Temarbhita, Jabalpur(MP) ...Applicant

(By advocate Mr .A.P .Singh)

## Versus

1. Union of India through  
The Secretary  
Department of Defence  
New Delhi.
2. The Controller General  
Defence Accounts  
R.K.Puram, New Delhi.
3. C.D.A., Ridge Road  
Jabalpur (MP)
4. Shri K.Muniyandi  
Asstt. Controller of  
Fin. & Accts., HFV, Avadi. ... Respondents.

(By advocate Mr.S.P.Singh)

ORDER

By Madan Mohan, Judicial Member

By filing this OA, the applicant seeks the following main reliefs:

(i) Direct the respondents to produce the complete record of the departmental promotion committee proceedings before the Tribunal.

(ii) If the applicant be promoted to the higher post, direct the respondents to give all consequential benefits to the applicant.

2. The brief facts of the OA are that the applicant joined the office of the respondents as UDC, which was re-designated as Auditor in the Central Government and posted in the office of the C.D.A.W.C., Meerut in the year 1965. He was promoted to the post of Section

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Officer (Accounts) and in the year 1987 he was further promoted as Accounts Officer. The office of the Controller General, Defence Accounts, New Delhi published a list of Senior Accounts Officers and Accounts Officers and the name of the applicant appeared in the said list at S.No.236 and the names of his juniors who have been promoted as officers in Junior Time Scale appear at Sl.No.238 and 240 (Annexure A-1). Respondent No.2 issued a promotion list of officer in the junior time scale in which the Senior Accounts Officers have been promoted to the post of officers in the Junior Time Scale w.e.f. 1.1.2001 (Annexure A2). The applicant is working as a Senior Accounts Officer since 1992 till date and there has been no adverse comment against him but he has not been promoted to the higher post i.e. Junior Time Scale of I.D.A.S.(Group-A) and his juniors namely K.Muniyandi and K.G.Patil have been promoted to the post of officers in the Junior Time Scale. Vide order dated 3rd July 2002 the applicant has been promoted to the Junior Time Scale of Indian Defence Accounts Service but the applicant has not been promoted/placed in cadre from 1.1.2001 in which juniors to the applicant were promoted. Hence this OA is filed.

3. Heard the learned counsel for both parties. It is argued on behalf of the applicant that there was no adverse remarks against the applicant and nothing adverse was ever communicated to him. Even then the applicant is superseded in promotion while his two juniors, namely K.Muniyandi and K.G.Patil have been

promoted w.e.f. 1.1.2001 vide Annexure A2 while vacancies existed at that time. The applicant was promoted vide order dated 3.7.02 while his juniors were promoted/placed in cadre from 1.1.2001. The action of the respondents is against law.

4. In reply, it is argued on behalf of the respondents that the DPC at the relevant point of time considered the names of the eligible Accounts Officer/Senior Accounts Officer for promotion to the Junior Time Scale of Indian Defence Accounts Service held during the month of November/December 2000. The applicant was also one of the officer in the zone of consideration for promotion to the higher post i.e. Junior Time Scale of the Indian Defence Accounts Service. The bench mark for promotion for induction to Group 'A' from lower Group was "Good", however the officer graded as outstanding would rank en-block senior to those who are graded as "Good" and placed in the select panel accordingly upto the number of vacancies, officers with same grading maintaining their inter-se seniority in the feeder post. The above DPC followed the procedure laid down, did not empanel the applicant for want of vacancies. Further, subsequent DPC was held on 7.5.2002 and the name of the applicant was considered for promotion to the Junior Time Scale and he was found fit to the said post and accordingly he was promoted to the Junior Time Scale of Indian Defence Accounts Service w.e.f. 3.7.2002 and no irregularity or illegality has been committed while considering the applicant.

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5. After hearing the learned counsel for both the parties, we find that the DPC held in the month of November/December, 2000 considered the name of the applicant but he was not empanelled because vacancies for promotional posts were filled in on the basis of marks as outstanding, very good and good. We have carefully gone through the ACRs and other relevant records produced by the respondents and we find that for the year 1999-2000 the applicant has been graded as a very good officer which has been accepted by the accepting authority. For the year 1998-1999 the applicant was ~~gra-ded~~ very good officer. As regards the period from 1.11.1997 to 31.3.1998 the reporting officer has graded very good but the accepting officer has down graded the ACR of the applicant to average stating that "I do not agree with the remarks and assessment of the report officer. The tenor of the report is highly overpitched. I have been watching the performance of the reportee officer myself. May be graded average". We find that no justification has been given while down grading the ACR of the applicant from very good to average. Therefore, the grading of the accepting officer cannot be accepted and the CR for this period is treated as very good as reported by the reporting officer. As regards the another period of 1.4.1997 to 24.10.1997 the ACR of the applicant has been recorded by the reporting officer as average which has been accepted by the accepting authority. With regard to the ACR of the applicant for the period from 31.10.1996 to 31.3.1997 the applicant has been rated by the reporting officer as good but again the accepting authority has graded him as an average officer without justifying any reason. Thus, this CR of the applicant should also be treated as good. As regards the period from 1.4.1996 to 31.10.1996, the reporting officer has graded



the applicant as a very good officer which has been accepted by the accepting authority as a very good officer. Again for the period from 1.4.1995 to 31.1.1996 he has been graded as a good officer by the reporting officer and the same has also been accepted by the accepting officer. For the period from 1.4.1994 to 31.3.1995 the applicant has been rated as good which has been accepted by the accepting authority. Thus, during the period from 1994-1995 to 1999-2000 the applicant has been rated atleast good in all these years. The applicant has also been rated very good for certain periods. The consolidated instructions as on 27.3.1997 regarding promotions given in Chapter 53 of the Swamay's Establishment & Administration, para 6.3.1(i) provides as such :

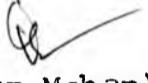
"(i) ..... For all Group 'C' Group 'B' and Group 'A' posts (up to and excluding the level of Rs. 3,700-5,000), the benchmark would be 'Good' and will be filled by the method of Selection-cum-Seniority as indicated in sub-para. (iii)".

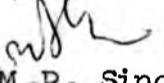
In the instant case the promotion is to be made to a Group-B post in the revised scale of Rs. 8,000-13,500/-. Therefore in terms of the aforesaid guidelines the bench <sup>alleged</sup> mark required for the promotion is only "Good". As stated above the applicant has got the bench mark "Good" in his ACR for the relevant period. Therefore, the finding of the DPC with regard to the applicant is not sustainable. We further find that the Hon'ble Supreme Court in the case of State of U.P. Vs. Yamuna Shankar Mishra, (1997) 4 SCC 7 has held that "before forming an opinion to be adverse, the reporting officers writing confidentials should share the information which is not a part of the record with the officer concerned, have the information confronted by the officer and then make it part of the record. This amounts to an opportunity given to the erring/corrupt



officers to correct the errors of the judgment, conduct, behaviour, integrity or conduct/corrupt proclivity".

6. In view of the foregoing, the Original Application is partly allowed and the respondents are directed to convene a review DPC to consider the case of the applicant for promotion in the Junior Time Scale of Rs. 8000-13,500/- *as found fit* w.e.f. 1.1.2001 and grant him all consequential benefits within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

  
(Madan Mohan)  
Judicial Member

  
(M.P. Singh)  
Vice Chairman

पूर्णांग सं. ओ/न्यौ.....जगलपुर, दि.....  
प्रतिलिपि गवर्नर लिट:-  
(1) गवर्नर, उच्च व्यवस्था एवं व्यवस्थापन, जगलपुर  
(2) आगेतार की/विविधीय.....प्रमाणित  
(3) प्रधारी की/विविधीय.....प्रमाणित  
(4) व्यवस्था एवं व्यवस्थापन व्यवस्थापन  
सुनिश्चित उप व्यवस्थाका प्रमाणित, दिन  
मा दिनांक  
Shri A P Singh H CJB  
Shri S P Singh H CJB

"SA"

Issued  
On 7-10-07  
By