

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 5th day of September, 2012

ORIGINAL APPLICATION No.553/2009

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)  
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Bhagwan Das Bhargava  
s/o Shri Gaiinda Lal Bhargava,  
r/o 3-Chha-1, Housing Board Colony,  
Shastri Nagar,  
Jaipur

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India  
through Secretary,  
Ministry of Defence,  
New Delhi.
2. The Director General of Medical Services,  
(Army)- 3B, Adjutant General's Branch,  
'L' Block, New Delhi.
3. The Principal Controller of Defence Accounts  
(Pension), Allahabad (U.P.)  
New Delhi.
4. The Commandant,  
Military Hospital,  
Jaipur

.. Respondents

(By Advocate: Ms. Anupama Chaturvedi)

**ORDER (ORAL)**

The applicant has filed this OA claiming following reliefs:-

"The Hon'ble Tribunal may kindly call for the entire record of the case and examine the same and by an appropriate order or directions the official respondents be directed to accord promotion the applicant on the post of U.D.C. from the due date or at least from the date when the person junior to him has been promoted. Further respondents may be directed to fix the pay of the applicant in the pay scale of U.D.C. from the date of his promotion and after proper refixation his post retrial benefits for which he is otherwise entitled may be granted with all consequential benefits. The respondents may further directed to release the full pension to the applicant with interest and the arrears may also be ordered with interest.

The impugned order Annexure-A/1 and A/2 may kindly be quashed and set aside alongwith the adverse remarks conveyed for the year 1984.

The Original Application may kindly be allowed with exemplary costs in the facts and circumstances of this case.

Any other appropriate order or directions which is deemed just and proper by this Hon'ble Tribunal may also be passed in favour of the applicant."

2. Brief facts of the case are that the applicant entered into the service on the post of L.D.C. in Medical Department of Army on 11.5.1963. In a case registered under Section 420, 467, 468 & 120-B IPC a challan was filed before the Special Court, C.B.I., Jaipur. The

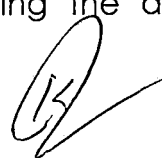


Special Court, C.B.I. in case No. 10/1986 vide judgment dated 19.3.1998 held the applicant guilty for offence under Section 420 IPC. It is not disputed that on attaining the age of superannuation, the applicant retired on 31.10.2003, during the period of suspension.

3. Against the judgment dated 19.3.1998, the applicant preferred appeal and the Appellate Court vide their judgment dated 8.12.2004 while accepting the appeal quashed the order passed by the Special Court, C.B.I. Cases and acquitted the applicant from the charges leveled against him.

4. The applicant submitted acquittal order dated 8.12.2004 passed by the Appellate Court before the respondents. Pursuant to that, sanction letter dated 24.1.2006 was passed by the respondents whereby full pay and allowances for the period from the date of suspension to the date of retirement i.e. 31.10.2003 has been ordered to be paid and the period when the applicant remained under suspension has been ordered to be spent on duty for all purposes.

5. The applicant submitted representation dated 12.1.2007 for redressal of his grievance and the same was replied vide letter dated 25.7.2008 by which the applicant was informed that promotion to the grade of U.D.C. was examined but due to adverse remarks in A.C.R. communicated by the respondent No.4 vide letter dated 7.5.1986, the applicant was not considered eligible for promotion. Against the communication dated 25.7.2008, the applicant filed appeal/representation dated 15.3.2009 for reconsideration of his case for promotion ignoring the adverse



remarks conveyed for the year 1984 and the same was decided by respondents No. 2 vide letter dated 6.4.2009 (Ann.A/2).

6. Aggrieved and dis-satisfied with the action of the respondents, the applicant has preferred this OA on the ground that the service record of the applicant was unblemished throughout his career except adverse remarks for the year 1984 and for expunction of the adverse remarks the applicant represented but the same has been rejected by the respondent and because of adverse remarks case of the applicant was not considered for promotion to the post of U.D.C.

7. In response to the submissions made on behalf of the applicant, the respondents have stated in their reply that the applicant was recommended for promotion to the post of U.D.C. in the year 1977 and further recommended on 6.4.1983 but the order were not issued till suspension because his name did not find place in the seniority/promotion turn. It is further contended that promotion for LDC to UDC is adjudged on the basis of seniority as well as ACRs. The applicant was not eligible for promotion to the post of UDC due to adverse remarks in his ACRs for the year 1984, 1985 and 1986 which were communicated to the applicant vide letter dated 7.5.1986 and copy of the ACR for the year 1984 was also handed over to the individual on 26.6.85. The applicant was considered by the DPC on the basis of ACRs upto 1986, but he was not found fit for promotion.

8. The respondents also referred 'average' ACRs in the year 1981-82, 1983 and 'below average' in 1984 and the adverse

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remarks recorded in the ACR in the year 1984 and 1985 were communicated to the applicant vide letter dated 7.5.1989. It is further submitted that no statutory complaint against the ACR has ever been made by the applicant.

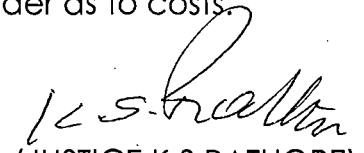
9. Having considered the rival submissions of the respective parties and upon careful perusal of the material available on record, it is not disputed that the applicant retired on 31.10.2003 on attaining the age of superannuation while he was under suspension and the Appellate Court vide judgment dated 8.12.2004 after about a year, after retirement of the applicant, accepted the appeal and quashed the order passed by the Special Court, C.B.I. cases and acquitted the applicant on the charges. On the basis of acquittal, all the retirement benefits to the post of L.D.C. have been paid, which is not in dispute. But since on account of adverse remarks in the ACRs, the case of the applicant was considered, but he was not found fit for promotion to the post of U.D.C. In such circumstances, the relief claimed by the applicant to direct the respondents to accord promotion to the applicant on the post of U.D.C. from the due date or at least from the date when junior to him has been promoted cannot be accepted. His case was considered but on account of adverse remarks he was not found fit. It is not a case of the applicant that he was not considered for promotion by the respondents. The applicant has a right of consideration, but not for promotion, as claimed by the applicant.

10. In view of the fact that his case was considered and he was not found fit on account of adverse remarks in the ACRs, as such,



the relief claimed by the applicant cannot be extended in his favour and in view of above discussions, we find not merit in this OA. Accordingly, the OA being bereft of merit deserves to be dismissed and the same is hereby dismissed with no order as to costs.

  
(ANIL KUMAR)  
Admv. Member

  
(JUSTICE K.S.RATHORE)  
Judl. Member

R/