

(Reserved On 07.05.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Dated: This the 14th day of May 2018

Original Application No 330/00239 of 2010

**HON'BLE DR. MURTAZA ALI, MEMBER-J.
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER-A**

Mohd. Saheem Siddiqui aged about 48 years, S/o Shri Said Ullah, Resident of 476/267, Katghar, Allahabad.

. . .Applicant

By Adv: Shri Swayamber Lal

V E R S U S

1. Union of India through the Defence Secretary, Govt. of India, Ministry of Defence, South Block, New Delhi - 110011.
2. The director General Ordnance Services (OS-8C), Army Hedquarters, DHQ PO New Delhi - 110011.
3. Officer Incharge, Army Ordnance Corps Records, A.O.C, Records Office, Secunderabad (A.P).
4. Commandant, Ordnance Depot, Fort, Allahabad - 210005.
5. No. 6964948 Shadark, S/o not known resident of 1, FOD, C/o 56, APO.
6. No. 6966058, Mashi Ullah, S/o not known, Resident of Central ordnance Depot, Chheoki, Allahabad.
7. No. 6966057Abhai Kumar Srivastava, S/o not known resident of Ordnance Depot, Allahabad.
8. 6954950 Daleep Kumar, S/o not known Resident of 1, F.O.D, C/o 56 A.P.O.
9. No. 6964954 Lawande Ravindra, S/o not known Resident of Ordnance Depot, Talegaon, Pune (M.R).

10. No. 6966059 Ram Shankar Singh, S/o not known resident of Central Ordnance Depot, Chheoki, Allahabad.
11. No. 6965308 Angrej Singh, S/o not known, Resident of A.D. Bhatinda, C/o 56, A.P.O.
12. No. 6965305 Dil Bag Singh, S/o not known, Resident of A.D. Bhatinda, C/o 56, A.P.O.
13. No. 6965130 Pathak Vinayak, S/o not known Resident of Ordnance Depot, Talegaon, Pune (M.R).
14. No. 6965303 Raj Kumar Sinha S/o not known Resident of Vehicle Depot, Panagarh (W.B).
15. No. 6965020 Mukhtyar Singh, S/o not known Resident of Central Ordnance Depot, Agra (U.P).

. . . Respondents

By Adv: Ms. Shikha Dixit

ORDER

(Delivered by Hon'ble Mr. Gokul Chandra Pati, AM)

This O.A. has been filed with the following main

reliefs:-

- "A. To issue writ, order or direction in the nature of certiorari to quash the order dated 23 Sep 2009 passed by Respondent No. 2 communicated by order dated 18 Jan 2010 (Annexure A-1 to compilation No. 1).
- B. To issue writ order or direction in the nature of mandamus directing the respondents to hold review DPC and consider the case of applicant for promotion to the post of Store Supdt from 1/1/2009 from the date on which his juniors have been promoted in the scale of Rs. 5000-8000 with consequential . "

2. The facts of this case in brief as stated in the OA are that the applicant was initially appointed on 21.06.1984 as Store Keeper in Ordnance Depot, Allahabad. He was promoted as Senior Store Keeper on 01.09.2003 and started working as Store Superintendent w.e.f. 01.01.2010. The applicant was granted 2nd financial up-gradation in scale of Rs. 5000-8000 w.e.f. 21.06.2008 on completion of 24 years of service. It is stated that in the seniority list of Senior Store Keepers (Annexure A-2) , the name of the applicant was shown at Sl. No. 170 and the name of his juniors from respondent Nos. 5 to 15 were shown below his name. But the panel prepared by the DPC for promotion to Store Keeper for the year 2009 held in November 2008, did not include the name of the applicant. The respondent Nos. 5 to 15 were promoted w.e.f. 01.01.2009 to the post of Store Superintendent from Senior Store Keeper vide order dated 18.12.2008 superseding the applicant. Thereafter, the applicant preferred a representation dated 16.02.2009 (Annexure A-3) to the respondent No. 2 for constitution of Review DPC to consider him for promotion to the post of Store Superintendent w.e.f. 01.01.2009 i.e. the date when his juniors were promoted. The applicant received a letter dated 09.03.2009 from respondent No. 3 (Annexure A-4) giving the

reason for not considering his case for promotion to the post of Store Superintendent. However, no order was passed on the representation of the applicant dated 16.02.2009, therefore, the applicant submitted reminders at Annexure A-5 and A-6 to the respondent No. 2. The respondent No. 2 then passed order dated 23.09.2009 (Annexure A-1). Aggrieved, the applicant has filed the present OA mainly on the ground that the DPC by not recommending him for promotion to the post of Store Superintendent has acted in an arbitrary manner. It is stated that the ground for not recommending the applicant for promotion to the post of Store Superintendent by the DPC in that the applicant has been awarded more than one 'Average' ACR grading in his last 5 years of service. This ground is not sustainable under law because the downgrading 'Average' remarks for the year 2003-04 and 2007-08 were never been communicated to the applicant. Hence, these two ACRs ought to have been ignored by the DPC held in November 2008 on the ground that such grading of 'Average' was never communicated to the applicant.

3. The respondents have filed Counter Affidavit. It is stated that although the applicant was meeting all other criteria including ACRs for the year 2002-03 to 2006-07 for

promotion and accordingly, he was granted 2nd financial up-gradation w.e.f. 21.06.2008 vide order dated 13.03.2008, but since the applicant had not completed four years of service as Senior Storekeeper, he could not be considered for regular promotion as Store Superintendent as on 21.06.2008. Subsequently, the case of the applicant was placed before the DPC held in November 2008 for considering his case for promotion to the post of Store Superintendent, where the applicant's last 5 years ACRs for the year 2003-2004 to 2007-08 were taken into account. Since, the applicant has been awarded more than one 'Average' grading in his last 5 years ACRs, in terms of Integrated HQs of MoD (Army) letter dated 10.05.2005, which provides that one ACR in last 5 years may be accepted in 'Average' grading for promotion, for which, the applicant was not found fit for promotion to Store Superintendent by the DPC in November 2008 as he had 'Average' grading for two years. However, the applicant's case was considered in subsequent year DPC and he was promoted as Store Superintendent w.e.f. 01.01.2010, as stated in para 11 of the Counter Affidavit, which has not been denied by the applicant in his pleadings.

4. The applicant has filed Rejoinder Affidavit. It is reiterated that the applicant has not received any information regarding down grading 'Average' remark in his ACR. Hence, 'Average' grading considered by the DPC as 'unfit' is illegal as non-communication of down gradation of ACR ought to have been ignored by the DPC.

5. We have heard Shri S. Lal, learned counsel for the applicant and Ms. Shikha Dixit, learned counsel for respondents. The argument of the applicant's counsel is that for the applicant, the grading of 'Average' is adverse since that would prevent him from subsequent promotion. Hence, it should have been communicated. Since, it was not communicated the DPC should have ignored these grading. He submitted copy of following three judgments in support of his case: -

- i. Dev Dutt Vs. Union of India and others – (2008)2 SCC (L&S) 771.
- ii. Abhijit Ghosh Dastidar Vs. Union of India & others (2009) 16 SCC 146.
- iii. judgment of Hon'ble Supreme Court dated 23.04.2013 in Civil Appeal No. 5892/2006 – Sukhdev Singh Vs. Union of India and others.

6. Learned counsel in his submissions drew our attention to para 7, 9, 10 and 11 of the Counter stating that as the applicant did not complete four years service as Senior Store Keeper, his case was not considered for regular promotion as on 21.06.2008. However, he was granted the benefit of 2nd ACP about six months prior to the due date for which he was sanctioned ACP. He was not found fit for promotion w.e.f. 01.01.2009 as he had two 'adverse' entries. But he was promoted w.e.f. 01.01.2010.

7. The only dispute in this case is whether the applicant is entitled to promotion as Store Superintendent w.e.f. 01.01.2009 on the ground that DPC held in November 2008 should have been ignored two 'average' entries, which were not communicated to the applicant. In the case of Dev Dutt (Supra) cited by the applicant's counsel, the Hon'ble Apex Court has held as under: -

"36. In the present case, we are developing the principle of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the annual confidential report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period to that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no rule/G.O requiring communication of the entry, or even if there is a rule/G.O prohibiting it, because the principle of non-

arbitrariness in State action as envisaged by Article 14 of the constitution in our opinion requires such communication. Article 14 will override all rules or government orders.”

8. In the case of Abhijt Ghosh Dastidar (Supra) cited by the applicant’s counsel, Hon’ble apex Court has held as under: -

“8. Coming to the second aspect, that though the benchmark “very good” is required for being considered for promotion, admittedly the entry of “good” was not communicated to the appellant. The entry of “good” should have been communicated to him as he was having “very good” in the previous year. In those circumstances, in our opinion, non-communication of entries in the annual confidential report of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances of promotion or getting other benefit. Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution. The same view has been reiterated in the aboveresferred decision (Dev Dutt case, SCC p.738, para 41) relief on by the appellant. Therefore, the entries “good” if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him.”

9. In the case of Sukhdev Singh (Supra) while reiterating the principle laid down in the case of Dev Dutt (Supra), Hon'ble Apex Court has held as under: -

“8. In our opinion, the view taken in Dev Dutt that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives.”

10. In view of the above legal proposition laid down by the Hon'ble Supreme Court in the cases discussed above, the action of the DPC held in November 2008 declaring the applicant unfit for promotion on the ground of below benchmark grading of 'Average' for two years is not sustainable since as per the principles laid down in the case of Abhijt Ghosh Dastidar (Supra), the DPC should have ignored these below benchmark entries in ACRs of the applicant since these were not communicated to him.

11. Accordingly, the OA is allowed and the impugned order dated 23.09.2009 rejecting the representation of the applicant to consider his case for promotion w.e.f. 01.01.2009 is set aside. The respondents are directed to consider the case of the applicant for promotion to the post of Store Superintendent w.e.f. 01.01.2009 by convening a review DPC to re-consider the case by ignoring the

below benchmark grading in ACRs as per the judgments of Hon'ble Apex Court in the cases discussed above. The above exercise shall be completed by the respondents within a period of three months from the date of receipt of certified copy of this order. It is also made clear that if the applicant is found suitable for promotion to the post of Store Superintendent w.e.f. 01.01.2009, his pay etc may fixed notionally without any arrear. No costs.

(GOKUL CHANDRA PATI)
MEMBER-A

(DR. MURTAZA ALI)
MEMBER-J

Anand...