

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA 1897/2013

New Delhi this the 27th day of October, 2015

**Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Mr. P.K. Basu, Member (A)**

Sudhir Chopra
S/o Late Shri I.S. Chopra
Aged 61 years
Resident of E 103, Kalka Ji New Delhi
And Retired as Joint Director
Directorate of Defence Estates
Southern Command Pune ... Applicant

(Appeared in person)

Versus

1. Union of India
Through the Secretary to the Government of India
Ministry of Defence, South Block
New Delhi
2. Director General of Defence Estates
Raksha Sampada Bhawan,
Ulaanbaatar Marg, Delhi Cantt. ... Respondents

(Through Shri T.A. Ansari, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant was an officer of Indian Defence Estate Service 1980 batch and retired on superannuation on 29.02.2012 from JAG (non-functional selection grade) without getting promotion to SAG and HAG. He has referred to DoP&T

instructions contained in OM dated 24.04.2009, which provide as follows:

"Consequent upon the acceptance of the recommendations of the Sixth Central Pay Commission, the following orders are issued:

- (i) Whenever an Indian Administrative Service Officer of the State of Joint Cadre is posted at the Centre to a particular grade carrying a specific grade pay in Pay Band 3 or Pay Band 4, the officers belonging to batches of Organized Group A Services that are senior by two years or more and have not so far been promoted to that particular grade would be granted the same grade on non-functional basis from the date of posting of the Indian Administrative Service Officers in that particular grade at the Centre.
- (ii) Grant of higher scale would be governed by the terms and conditions given in Annex-I.
- (iii) Appropriate amendments in the Service Rules may also be carried out.
- (iv) Establishment Division of this Department will issue orders from time to time, in consultation with the Establishment Officer, intimating the batch of the officers belonging to the Indian Administrative Service who have been posted at the Centre in the various grades of PB-3 and PB-4 as well as the date of posting of the first officers belonging to the batch.

2. Grant of higher scale (i.e. pay band and/or grade pay) under these instructions would be w.e.f. 1.1.2006, wherever due and admissible."

2. After his retirement, the applicant came to know that some of his juniors in the batch had been given Non Functional Up Gradation (NFUG) in the last week of July 2012, in which the applicant's name was left out. He tried to get copies of the minutes of the Departmental Screening Committee (DSC) under RTI Act 2005 but this was denied to him and even his appeal to

Central Information Commission (CIC) was rejected. According to the applicant, there is no provision for delinking the name of any officer and even in the regular DPC proceedings, all officers in the zone of consideration have to be considered. The non-functional SAG to officers other than the applicant was granted vide order dated 11.06.2012.

3. The applicant also states that he had been posted in the faculty position in the National Institute of Defence Estates management which is a training institute of Defence Estates Department where only those having outstanding track record are posted and based on this fact, it should be deemed that he fulfilled benchmark requirements. The applicant further claims that he is a whistle blower and had filed complaints against his superiors which has resulted in his harassment by those superiors. In this regard, he has quoted several file notings in his OA and also the order of this Tribunal in OA 2808/2012, **Shri Sudhir Chopra Vs. Union of India and others** filed by him where the Tribunal observed as follows:

"17.This only indicates that there is some hanky-panky at work.

xxxx xxxx xxxx xxxx

19.This appears to be on account of the fact that an institutional malice has been operating against the applicant.

20. In totality of facts and circumstances of the case, we quash the impugned orders dated 29.02.2012 (five in numbers) as they are hit by malice of both facts and law, and have been passed against and in ignorance of the express instructions of the Government attempted to be covered by interpolation on later dates....."

It is stated that this would show that the department has acted in a malafide manner against him.

4. The respondents in their reply have stated that another OA bearing number No.2808/2012 (supra) was filed by the applicant being aggrieved by orders dated 29.02.2012 of the first respondent disposing of the representations of the applicant qua his ACRs for the years 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005 and 2005-2006, in pursuance of the order dated 9.02.2012 of this Tribunal in OA 3677/2011. This Tribunal, vide its order dated 9.02.2012 had directed inter alia the first Respondent to decide the representations of the applicant against the adverse and below bench mark gradings in his ACRs. The first respondent complied with the above orders of the Tribunal and conveyed its decision on the representations to the applicant vide orders dated 29.02.2012. OA No.2808/2012 was decided in applicant's favour, orders dated 29.02.2012 quashed and respondents directed as follows:

"Therefore, we direct the respondents to convene a review DPC to consider the case of the applicant for promotion to SAG and HAG at par with the immediate juniors with all consequential benefits flowing therefrom."

5. The applicant also pointed out that from the minutes of the meeting of the DSC filed by the respondents, it would be seen that these meetings have been held in circulation without indicating any date therein. Even the Members who have signed the minutes have not put any date.

Moreover, in the minutes annexed at Appendix 'A', against the name of the applicant, in the column "Assessed as", 'unfit' has been mentioned. From the minutes, it is not clear how the Committee has come to the conclusion that he is 'unfit' and all other nine candidates as 'fit'.

6. Aggrieved by the action of the respondents, the applicant has filed the instant OA seeking the following reliefs:

- "A. The Hon'ble Tribunal may kindly summon all records pertaining to the proceedings relating to the issuance of Respondent No.2 letter dated 11th June 2012 for grant of NFUG to SAG level including the ACRs/APARs of all IDES officers who have been regularly promoted to SAG alongwith all notes/ notings/ minutes/ proceedings of Departmental Screening Committee alongwith ACRs of all officers granted NFUG in SAG Scale as also all notes/ notings/ minutes/ proceedings leading to withdrawal of NFUG to Shri Bhaskar Reddy;
- B. Directions to the Respondents to grant NFUG to SAG level to the Applicant w.e.f. 3.01.2006 with interest @ 12% p.a."

7. The respondents clarified that subsequent to the consideration of names of eligible officers for grant of NFUG to SAG by the first DSC meeting, another proposal for grant of NFUG to SAG was initiated, wherein the name of the applicant was also considered for grant of NFUG from the effective date as notified by the DoP&T vide its OM No.AB.14017/64/2008-Estt(RR) dated 1.07.2010. This effective date in case of the applicant was 3.01.2006. The case for grant of NFUG to SAG of

the applicant was considered by the DSC w.e.f. 3.01.2006 for the panel year 2005-06. However, since the ACR gradings of the applicant were below bench mark, the applicant was found to be 'unfit' for grant of NFUG to SAG w.e.f. 3.01.2006 in the panel year 2005-06. The applicant's case was considered further for the panel years upto 2011-12 as the applicant retired on superannuation on 29.02.2012. However, the applicant was found to be 'unfit' for grant of NFUG to SAG even in the subsequent panel years upto 2011-12 on account of below bench mark gradings in his ACRs.

8. Regarding the status of whistle blower, the respondents have stated that while the applicant has made several complaints against various officers of the department, these complaints have been replied to by the department from time to time, which includes detailed reply given to the complaint referred by the Group of Secretaries to Ministry of Defence (MoD) as well as to Central Vigilance Commission (CVC) and other agencies. Cabinet Secretariat vide its OM dated 7.12.2011 intimated that Group of Secretaries considered complaints dated 23.08.2007 and 5.05.2010 of the applicant and decided to close the issues except those that are sub judice. The applicant claims to be a whistle blower only on this basis.

9. On the question of treating his posting in the training faculty as his outstanding performance, the respondents state that this contention of the applicant is misplaced as he was

posted to Delhi after his North East posting and was posted in NIDEM as a Joint Director against a vacancy.

10. We have heard the learned counsel for the parties and gone through the pleadings available on record.

11. It is not a fact that the department had not considered the case of the applicant for grant of NFUG. He was considered by the Committee but found 'unfit' because of his adverse ACRs. It would have been desirable had the Selection Committee also made it a part of their record the summary of gradation of ACRs. We hope and trust that in future such meetings will not be held in circulation and the minutes will be prepared properly with dates recorded therein, otherwise it may give an impression as if there has been no application of mind.

12. We agree that the mere posting of the applicant in the Training Institute cannot entitle him to be treated as an outstanding officer. This argument is indeed specious. Also, the whistle blower angle is not borne out from facts. However, in this case, since this Tribunal has now decided OA 2808/2012 in applicant's favour the status of the offending ACRs perhaps has undergone change. Therefore, the applicant's case for NFUG would have to be reviewed. The OA is, therefore, disposed of with a direction to the respondents to convene a Departmental Screening Committee meeting to review the case of the applicant for grant of NFUG at par with his immediate juniors in light of the changed ACR scenario within a period of 3

months from the date of receipt of a certified copy of this order.

No costs.

(P.K. Basu)
Member (A)

(Syed Rafat Alam)
Chairman

/dkm/