

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.3308/2012

New Delhi this the 17th day of September, 2015

Hon'ble Shri A.K. Bhardwaj, Member (J)
Hon'ble Dr. Birendra Kumar Sinha, Member (A)

Shri Anil Wason
S/o Late Shri P.K. Wason,
R/o House No.13A, Pocket No.3,
Mayur Vihar, Phase-1,
Delhi-110091.

... Applicant

(By Advocate Shri O.P.Gehlaut)

VERSUS

1. Union of India through
Joint Secretary (UT Delhi),
Ministry of Home Affairs,
Govt. Of India, North Block,
Central Secretariat, New Delhi.

2. Govt. of NCT of Delhi through
Its Chief Secretary,
Delhi Administration Secretariat,
7th Floor, B-Wing, I.P.Estate,
New Delhi.

... Respondents

(By Advocate Shri R.V.Sinha with Shri Satyendra Kumar for
Shri R.N.Singh and Shri N.K.Singh for Mrs.Avnish Ahlawat)

ORDER (ORAL)

Hon'ble Mr.A.K.Bhardwaj, Member (J):

The prayer made in the present OA filed under Section 19
of Administrative Tribunals Act, 1985 read thus:-

- “(a) Order respondents to grant him promotion to the selection grade of DANICS in the scale of Rs.15,600-39100 w.e.f. 10.02.2011 viz., the date on which applicant's juniors were promoted.
- (b) Declare any instructions/rule denying promotion to a retiree against a vacancy occurring during his service as invalid.

- (c) Order grant of arrears of pensionary benefits, leave encashment and fixation of his regular pension in the promoted scale w.e.f. the date of his superannuation on 30.11/2011 and arrears of pay w.e.f. 10.2.2011 with 12% interest thereon.
- (d) Order payment of cost for forcing litigation on him.
- (c) Issue any orders/direction that may be just and appropriate in the interests of justice for securing the above prayers.”

According to the learned counsel for applicant that when the Committee met on 03.02.2011 and 06.05.2011 considered his peers and juniors for promotion to selection grade of DANICS on ad hoc basis, he was nixed such consideration. The stand taken by the respondents in their reply is that the applicant could not be considered for such promotion because sufficient numbers of his ACRs were not made available to the Committee. Rejoining the submission, Mr. Gehlaut, learned counsel for the applicant submitted that if the ACRs for the relevant period were not available, the applicant should have been assessed for promotion on the basis of the service record pertaining to the period preceding the 5 years, the record for which was available. To buttress his plea, he relied upon para 3 of the minutes of the meeting of the DPC held on 20.08.2004.

2. We heard learned counsels for parties and perused the record. It is not in dispute that the Committee met on 03.02.2011 and 06.05.2011 considered peers and juniors of the applicant for their promotion to selection grade of DANICS and

ignored the applicant. It was for the Head of the Department/Controlling Authority to make the relevant service records/ACRs of the applicant available to the Selection Committee. In view of the relevant instructions on the subject i.e. Dept. of Per. & Trg. O.M.No.22011/5/86-Estt (D) dated 10.04.1989, where certain numbers of ACRs of the candidates to be assessed for promotion are not available, the DPC may consider ACR of the years preceding the period in question. The instructions read thus:-

“50. Consideration of CRs for.- (a) For Promotion- Confidential Rolls are the basis inputs on the basis of which assessment is to be made by each DPC. The evaluation of CRs should be fair, just and non-discriminatory. Hence-

- (a) The DPC should consider CRs for equal number of years in respect of all officers considered for promotion subject to (c) below.
- (b) The DPC should assess the suitability of the officers for promotion on the basis of their service record and with particular reference to the CRs for 5 preceding years. However, in cases where the required qualifying service is more than 5 years, the DPC should see the record with particular reference to the CRs for the years equal to the required qualifying service. (If more than one CR has been written for a particular year, all the CRs for the relevant year shall be considered together as the CR for one year).
- (c) Where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if in any case even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per (b) above. If this is also not possible, all the available CRs should be taken into account.

- (d) Where an officer is officiating in the next higher grade and has earned CRs in that grade, his CRs in that grade may be considered by the DPC in order to assess his work, conduct and performance, but no extra weightage may be given merely on the ground that he has been officiating in the higher grade.
- (e) The DPC should not be guided merely by the overall grading, if any, that may be recorded in the CRs but should make its own assessment on the basis of the entries in the CRs, because it has been noticed that sometimes the overall grading in a CR may be inconsistent with the grading under various parameters or attributes.
- (f) If the Reviewing Authority or the Accepting Authority, as the case may be, has overruled the Reporting Officer or the Reviewing Authority, as the case may be, the remarks of the latter authority should be taken as the final remarks for the purposes of assessment, provided it is apparent from the relevant entries that the higher authority has come to a different assessment consciously after due application of mind. If the remarks of the Reporting Officer, Reviewing Authority and Accepting Authority are complementary to each other and one does not have the effect of overruling, the others, then the remarks should be read together and the final assessment made by the DPC.”

Such is also the view taken by the DPC met on 20.08.2004 to consider the eligible officers for their promotion to the entry grade of DANICS. Para 3 of the minutes read thus:-

“3. The Committee, taking into consideration the position brought out above and after due deliberations, decided to adopt the following criteria for assessing the suitability of the eligible officers:-

- (i) The eligible officers will be assessed on the basis of their records of service pertaining to the last five years preceding the year for which they are considered for promotion, with particular reference to their Annual Confidential Rolls (ACRs). In case any of the ACRs for this period is not available, equal number of ACRs preceding this period will be taken for consideration.
- (ii) The benchmark grading for assessing an officer as suitable for promotion will be that the officer should have earned the grading of 'Good' or above at least in three out of the five ACRs being assessed by the Committee. The officers will be assessed as 'Fit' or 'Unfit' and those assessed as 'Fit' will be arranged in the order of their seniority within each category, and
- (iii) The following categories of officers will be assessed 'Unfit'."

There could be a doubt that whether a retired employee could claim ad hoc promotion, as a matter of right. To clarify the same, learned counsel for applicant relied upon the judgment of Hon'ble Supreme Court in **State of Uttaranchal & Anr Vs. Sri Shiv Charan Singh Bhandari & Ors** (JT 2013 (12) SC 269), wherein it has been ruled that when a junior in the cadre is conferred with the benefit of promotion ignoring the seniority of senior employee without any rational basis the person aggrieved can always challenge the same in appropriate forum.

Para 12 of the judgment read thus:-

"12. It can be stated with certitude that when a junior in the cadre is conferred with the benefit of promotion ignoring the seniority of an employee without any rational basis the person aggrieved can always challenge the same in an appropriate forum,

for he has a right to be considered even for ad hoc promotion and a junior cannot be allowed to march over him solely on the ground that the promotion granted is ad hoc in nature. Needless to emphasise that if the senior is found unfit for some reason or other, the matter would be quite different. But, if senior incumbents are eligible as per the rules and there is no legal justification to ignore them, the employer cannot extend the promotional benefit to a junior on ad hoc basis at his whim or caprice. That is not permissible.”

3. In view of the aforementioned, the OA is disposed of with direction to respondents to consider the applicant for his ad hoc promotion to selection grade of DANICS as on 3.02.2011/06.05.2011 in terms of the aforementioned instructions issued by DOPT (ibid). Needful should be done within three months from the date of receipt of a copy of this order. No costs.

(Dr. Birendra Kumar Sinha)
Member (A)

(A.K.Bhardwaj)
Member (J)

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