

**Central Administrative Tribunal
Principal Bench**

OA No.1984/2018

New Delhi, this the 29th day of October, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Dilip Vishwanath Gondnale,
S/o Lt. Sh. Vishwanath Ganapati Gondnale,
Age 59 years.
R/o Qr. No. 1/3, Type-V,
HVF Estate, Avadi,
Chennai-600054.

...Applicant

(By Advocate : Shri A.K. Behera)

Versus

1. Ordnance Factory Board,
Through its Director General,
Government of India,
Ministry of Defence,
Department of Defence Production,
10-A, S.K. Bose Road,
Kolkata-700001.
2. Ministry of Defence,
Department of Defence Production,
Through its Secretary/DP,
South Block, Rajpath Marg,
New Delhi-110001.
3. Department of Personnel & Training,
Through its Secretary/Per
North Block,
New Delhi-110001.

...Respondents

(By Advocate : Shri Rajeev Kumar)

ORDER (ORAL)**Justice L. Narasimha Reddy, Chairman :-**

The applicant is an officer of Indian Ordnance Factory Service, of 1982 batch. He joined the service as Assistant Works Manager and thereafter he earned promotions to the post of Works Manager, General Manager and at present he is working as Sr. General Manager in the Higher Administrative Grade (HAG). The next promotion is to the post of Additional Director General of Ordnance Factories/Member Ordnance Factories Board, which is in the HAG + category.

2. The cases of the applicant and some of his seniors and juniors were considered against six vacancies of HAG+ category, pertaining to 2017-18. The DPC recommended the name of the applicant and the Appointments Committee of the Cabinet (ACC) has also cleared the same on 14.06.2017. The grievance of the applicant is that though more than one year has elapsed, he has not been issued orders of appointment, whereas his juniors were appointed. It is in this background that the applicant assailed the

action of the respondents in not promoting him to the HAG+ level in the service and seeks a direction to them to promote him w.e.f. 01.12.2017, with all consequential benefits.

3. The respondents filed counter affidavit. It is stated that though the name of the applicant has been recommended by the DPC for the post of HAG + and the ACC has also cleared it, he was not appointed to that post since his name figured in 'Agreed List'. It is stated that one post was kept vacant for the applicant, so that it can be filled depending on the outcome of the further verification.

4. We heard Shri A.K. Behera, learned counsel for applicant and Shri Rajeev Kumar, learned counsel for respondents.

5. This is a case in which the applicant has reached almost the pinnacle of the service, without obstruction. The benefit of promotion was denied to him though he was cleared at every stage. The scrutiny by the DPC for this post itself is very strict. Even after the DPC recommends name of a candidate, ACC examines the matter from various angles, which are not confined to those fitness and

ability. The one of desirability is also taken into account. It is not in dispute that the name of the applicant has been cleared by the ACC on 14.06.2017.

6. The circumstances under which the benefit of the promotion to a person can be denied was dealt with by the Hon'ble Supreme Court in ***Union of India Vs. K.V. Janakiraman*** AIR 1991 SC 2010. It was held that even if a DPC recommends the name of an employee, the promotion can be denied, in case the Govt. servant :-

- (i) is placed under suspension
- (ii) has been issued chargesheet in disciplinary proceedings; and
- (iii) figured as an accused in the criminal case.

These very parameters were incorporated in the OM dated 14.09.1992 issued by the DOP&T.

7. It is no doubt true that in the recent past, the DOP&T issued another OM dated 21.06.2013, in relation to issuance of vigilance clearance. According to this Memorandum, the clearance can be withheld if (i) the officer is under suspension (ii) the officer is on the Agreed List, provided that in all such cases the position shall be

mandatorily revisited after a period of one year (iii) a chargesheet has been issued against the officer in a disciplinary proceedings and the proceeding is pending (iv) orders for instituting disciplinary proceeding against the officer have been issued by the Disciplinary Authority provided that the chargesheet is served within three months from the date of passing such order (v) chargesheet has been filed in a Court by the Investing Agency in a criminal case and the case is pending (vi) orders for instituting a criminal case against the office have been issued by the Disciplinary Authority provided that the chargesheet is served within three months from the date of initiating proceedings (vii) sanction for investigation or prosecution has been granted by the Competent Authority in a case under the PC Act or any other criminal matter (viii) an FIR has been filed or a case registered by the concerned Department against the officer provided that the chargesheet is served within three months from the date of filing/registering the FIR/case (ix) the officer is involved in a trap/raid case on charges of corruption and investigation is pending.

8. Admittedly, the applicant is not facing any of the 3 circumstances mentioned in the Memorandum dated

14.09.1992. In the subsequent Memorandum dated 21.06.2013, those 3 circumstances are dealt with in different stages. A new addition appears to be one of 'Agreed List'. The scope of this is not mentioned. Further in comparison to the circumstances such as the employee having been issued a charge sheet, his having been placed under suspension or his figuring as an accused in the criminal case, the 'Agreed List' does not indicate the circumstances under which a person can be included in it. Naturally the principle of *eiusdem generis* needs to be applied. It is only when the circumstances referable to that i.e. 'Agreed List' are as grave as those referable to the other three mentioned in the judgment of Hon'ble Supreme Court and the OM dated 14.09.1992, or at least the other eight occurring in the O.M. dated 21.06.2013, that the benefit of promotion which has been extended by the DPC as well as ACC, can be denied to an officer.

9. The applicant is about to retire from the service shortly on attaining the age of superannuation.

10. We, therefore, allow the OA and direct that the recommendations of the DPC and the clearance of the ACC shall be implemented in the case of the applicant unless

any of the factors mentioned in the Office Memorandums dated 14.09.1992 and of 21.06.2013 exist. This exercise shall be completed within a period of three weeks from today. It is needless to mention that the promotion as and when ordered shall with effect from the date as suggested by the DPC.

There shall be no orders as to costs.

(Aradhana Johri)
Member (A)

(L. Narasimha Reddy)
Chairman

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