

**Central Administrative Tribunal
Principal Bench**

OA No.304/2013

New Delhi, this the 13th day of November, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)**

Sh. A. K. Mishra
S/o Sh. Ramdeo Mishra
Aged about 52 years,
R/o F-11, MIG Double Story,
Pratap Vihar, Ghaziabad.
And also
Assistant Industrial Adviser
Room No.64-A,
Ministry of Steel,
Udyog Bhawan,
New Delhi 110 107. ... Applicant.

(By Advocate : Shri A. N. Choudhary with Shri Sanjeev Joshi)

Vs

1. Union of India
Through its Secretary
Ministry of Steel
Udyog Bhawan,
New Delhi 110 001.

2. Sh. S. K. Bhatnagar
Assistant Industrial Adviser
Ministry of Steel,
Udyog Bhawan,
New Delhi 110 107. Respondents.

(By Advocate : Shri D. S. Mahendru)

: ORDER (ORAL) :

Justice L. Narasimha Reddy, Chairman :-

The applicant joined the service in the Ministry of Steel as Assistant Industrial Adviser (AIA for short) in the year 1990. On account of absence of any promotional avenues for the

initial period of ten years, he was granted the benefit of Modified Assured Career Progression Scheme (MACP for short) in the year 2008.

2. Vacancy in the next higher post of Deputy Industrial Adviser (for short, DIO) arose sometime in the year 2011. It was found that the ACRs of the applicant for the period of five years preceding the date of consideration were below average. As required under the relevant guidelines framed by the DoP&T, he was communicated those ACRs. On a representation made by him, the competent authority, i.e., the Joint Secretary upgraded the four ACRs for of the applicant from "Good" to "the level of "Very Good. However, for the year 2009-2010, his ACR was graded as "Average". Once again, the applicant was communicated the same, and he, in turn, made a representation. This time, however, the Joint Secretary did not accede to his request.

3. The DPC for promotion to the post of DIO was convened in the year 2013. The DPC found the applicant to be unfit on account of his poor ACR for the year 2009-2010, and recommended the 2nd respondent, who is junior to the applicant. The recommendation of the DPC was accepted, and through order dated 18.01.2013, the 1st respondent promoted the 2nd respondent. The same is challenged in this OA. Apart

from that, the applicant prayed for the relief of upgradation of his ACRs for the period 2009-2010.

4. The respondents filed detailed counter affidavit opposing the OA. It is stated that though the ACRs of the applicant for a period of four years were upgraded from “Good” to “Very Good”, his ACR for the year 2009-2010 remained at “Average”. It is also stated that for promotion to the post of DIO, the parameters were fixed in such a way that an officer should have the grading of “Very Good” in the ACRs consistently for the preceding five years.

5. We heard Shri A. N. Choudhary with Shri Sanjeev Joshi, learned counsel for the applicant and Shri D. S. Mahendru, learned counsel for the respondents.

6. It is not in dispute that the 2nd respondent is junior to the applicant. However, he was promoted to the post of DIO. Had it been a case that the appointment to DIO is purely by promotion, seniority would have become the deciding factor. However, the appointment to that post was by way of selection. The ACRs of five years preceding the date of consideration, becomes relevant. The ACRs of the applicant for the preceding 5 years were “Good” for 4 years and “Average” for 5th year. When the occasion arose for consideration for promotion to DIO, the ACRs of the applicant

were communicated to him to enable him to make representation. Such representation was made and the competent authority has upgraded his ACRs for four years to the level of "Very Good". In the context of ACR for the year 2009-2010, no decision was taken. The applicant made a representation in the year 2011. However, his request was not acceded to. The result was that the ACR for that year remained at "Average". Since the requirement for the post of DIO is ACRs above benchmark, which means that the ACRs must be at the level of "Very Good" or above, the applicant was found to be unfit. Therefore, no exception can be taken to the non selection of the applicant.

7. Though a prayer was made for upgradation of the ACR for the year 2009-2010, learned counsel for the applicant did not press that relief during the course of arguments. Even otherwise, we find it difficult to upgrade the said ACR.

8. The OA is accordingly dismissed.

There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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