

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.801/2003

New Delhi, this the 02nd day of January, 2004

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.K. Naik, Member(A)

R.C. Anand
B-I/352, Janakpuri, New Delhi .. Applicant
(Shri P.K. Sharma, Advocate)

versus

Union of India, through

1. Secretary
Department of Expenditure
Ministry of Finance
North Block, New Delhi
2. Chief of the Air Staff
Air Headquarters Vayu Bhavan, New Delhi
3. Chief Administrative Officer
Ministry of Defence
C-II, Hutments South Block, New Delhi .. Respondents

(Shri R.N. Singh, Advocate)

ORDER

Shri S.K. Naik

It is for the second time that the applicant has approached this Tribunal. He had earlier filed OA 2132/2001 seeking financial upgradation under Assured Career Progression (ACP) Scheme. He had contended therein that even though he has put in more than 24 years of service and was entitled to the first and second ACPS with effect from 9.8.99 i.e. from the date the Scheme came into operation as he had not receive any promotion during the entire period of service. He had challenged the order dated 10.4.2001 whereby his case had not been recommended for the grant of ACP on the ground that the applicant did not get the bench mark. Respondents had then stated that grading of 'good' was the Bench mark set for being recommended for the ACPS. Tribunal then had

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called for the CR dossier of the applicant and had examined the relevant reports and found that from the year 1999 onwards, on many occasions, applicant had not come up to Bench mark but his CRs for the year 1998-99, 1999-2000 and 2000-01 clearly indicated that the applicant did get the bench mark which is stated to be good or above it. The Tribunal therefore observed that the Departmental Promotion Committee fell into error and did not consider the reports properly. Accordingly, it directed the respondents to hold a review DPC and reconsider the CRs of the applicant with respect to the meeting held in October, 2001 and pass appropriate recommendations/orders.

2. It is in this background that the respondents have passed the order dated 17.2.2003 once again declaring the applicant 'unfit' which is being assailed by the applicant in the present OA.

3. It is relevant to mention here that the applicant has been claiming grant of ACP w.e.f. 9.8.99 on the basis of his juniors having been so granted. In the earlier OA, it has been held clearly that ACP as per the scheme can be granted not on the basis of seniority but based on normal promotion norms i.e. 'Selection' in the present case and since the DPC held during October, 2001 based on his record of service had not recommended for grant of first financial upgradation, review DPC was to be held to reconsider the case. Applicant, in addition to the grant of ACP, has also sought relief with regard to second ACP which again has been denied to him by the respondents on

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the ground that he does not possess the requisite educational qualification prescribed for promotion from the post of DEO 'D' to that of DPA 'B', in the pay scale of Rs.6500-10500.

4. Counsel for the applicant has reiterated his arguments which had been advanced in the earlier OA that in the absence of any communication with regard to any adverse remarks in his CR, respondents could not take the plea that the applicant did not reach the Bench mark. He has therefore prayed that the applicant should be considered for grant of ACP along with his juniors without any reference to the Bench mark. In view of the observations of the Tribunal in his earlier OA in which this issue has already been settled, the only point to be considered is to find out as to whether the proceedings of DPC held on 10th October, 2001 has duly and appropriately been reviewed and whether the Committee has reconsidered the reports of the relevant years properly. In this regard, counsel for the respondents has contended that the review DPC as directed by the Tribunal has been held on 18.12.2002 and considered the case of the applicant in the light of the observations of the Tribunal. Confidential Reports for the relevant years were reconsidered and instructions of DoPT too were kept in view and thereafter the Committee concluded that the overall assessment of the applicant did not meet the bench mark for grant of financial upgradation w.e.f. 9.8.2001. He has further contended that in the subsequent meeting of the DPC, the applicant was found to have reached the bench mark and was therefore being granted first financial upgradation w.e.f. 15.1.2003.

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5. On the earlier occasion, the Tribunal had observed that the DPC did not consider the matter properly. Counsel for the respondents, therefore, was directed to produce the Screening Committee proceedings as well as the CR dossier of the applicant to satisfy ourselves as to whether the DPC applied in-depth consideration on the basis of Tribunal's observations made in OA 2132/2001(supra).

6. He has produced the same and we have carefully gone through them. Perusal of the Screening Committee proceedings dated 18.12.2002 awards the following grading to the applicant:

1996-1997 :	Average
1997-1998 :	Average
1998-1999 :	Average
1999-2000 :	Good
2000-2001 :	Very good.

Based on this overall performance in which the applicant gets 3 'average', one 'good' and one 'very good' that the Screening Committee appears to have arrived at the conclusion that the applicant is not fit for being recommended. Proceedings of the Screening Committee does not indicate if they have considered any material outside the Confidential Reports of the applicant and it only reiterated in general terms the instructions of DoPT that the average performance cannot be regarded as complimentary to the officer as average performance should be regarded as routine and undistinguished. It had also mentioned about the performance, that is above average and performance that is really noteworthy which should entitle an officer to recognition and suitable rewards in the matter of promotion. It also refers to

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the Committee not to be merely guided by the overall grading if any that may be recorded in the ACRs but should make its own assessment on the basis of entries in the ACRs. It appears that in that pretext the Committee at the time of review DPC has brought down the overall grading of the applicant for the year 1998-99 from 'good' as recorded in the ACR to 'average' as overall grading. This, we are afraid, will not be sustainable firstly for the reason that while disposing of the earlier OA, the Tribunal has categorically opined that the applicant had acquired the bench mark which is stated to be 'good' or above it and it was not open for the Screening Committee to go behind this findings of the Tribunal. Secondly, ¹unless the Committee had adopted a procedure of its own and considered any material outside the Confidential Reports, just quoting from DoPT instructions would not justify downgrading of the overall assessment.

7. When the applicant has been awarded overall grading of 'good' in his ACR for the year 1998-99 which stood finalised, any lowering of the grade would amount to adverse inference warranting communication to the applicant, which has not been done in this case.

8. Under the circumstances, we find that the review DPC proceedings suffer from a serious illegality which needs to be set aside, with the result the applicant will have to be treated to have the bench mark of 'good' and should be awarded first ACP with effect from 9.8.2001. We order accordingly.

True

9. With regard to the second ACP, we find that the respondents have taken the same ground of not possessing higher educational qualification as advanced in OA 261/2003. However, in view of the decision of the Tribunal in OA 261/2003, the ground advanced by the respondents does not survive and therefore the applicant will be eligible for consideration for grant of second ACP as per the Scheme/instructions on the subject.

accordingly is allowed and he

10. The OA₂ is disposed of in the aforesaid terms. There shall be no order as to costs.

S.K. Naik
(S.K. Naik)
Member(A)

V.S. Aggarwal
(V.S. Aggarwal)
Chairman

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