

Original Application No.1506 of 2003

New Delhi, this the 16th day of April, 2004

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)
HON'BLE MR.S.A. SINGH, MEMBER (A)

M. Venekataraman
S/o Shri R.V. Mahadevan
General Manager (Retd.)
Indian Ordnance Factory Service,
R/o 792, Pocket-E,
Mayur Vihar Phase-II,
Delhi-110 092.

..Applicant

By Advocate: Shri S.K. Gupta.

Versus

1. Union of India
Through Secretary,
Department of Defence Production,
and Supplies,
Ministry of Defence,
Government of India,
South Block,
New Delhi-110 001.
2. Chairman & Director General,
Ordnance Factories,
Ordnance Factory Board,
10-A, Shaheed Khudi Ram Bose Road,
Calcutta-700 001.
3. Chairman,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.
4. Shri G. Gopa Kumar,
'SHARANYA' Temple Road,
Sasthamangalam, Trivendrum,
Kerala.

Or alternatively through

Chairman & Director General,
Ordnance Factories,
Ordnance Factory Board,
10-A Shaheed Khudi Ram Bose Road,
Calcutta-700 001.

..Respondents

By Advocate: Shri V.S.R. Krishna.

ORDER

Hon'ble Mr. Kuldip Singh, Member (J)

This is a second round of litigation. The

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applicant has filed this OA whereby he has assailed an order dated 14.11.2002 by which the promotion of the applicant to the post of Senior General Manager in Indian Ordnance Factory Service (IOFS) for the year 1995-96 has been denied to the applicant on the ground for want of sufficient number of vacancies. The applicant submits that the fact remains that though his order has been stated to be passed in compliance of the directions of the Tribunal in the earlier OA of the applicant where the Tribunal had directed the respondents to hold the review DPC to consider the case of the applicant for promotion from the date on which the respondent No.4, his junior, was considered for promotion and to promote the applicant with retrospective effect if found fit by the DPC and to grant him the notional promotion and fixation of pay and allowances etc..

2. Facts in brief are that the applicant was a member of Indian Ordnance Factories Service (IOFS) and has superannuated on 31.10.1995. At the time of superannuation he was working as General Manager and was posted at Small Arms Factory, Kanpur. The post of General Manager belongs to Senior Administrative Grade which the applicant was occupying from 31.3.1986 and though he had put in more than 9 1/2 years in service as SAG before retirement but at the time of consideration for the post of Senior General Manager, the applicant has been ignored and his junior Shri G.Gopakumar has been given promotion.

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3. In the OA the applicant has also highlighted his various achievements and commendation certificates received by him during his service as Best General Manager Award and he has also placed on record various charts showing how during his tenure factories had progressed. He has also received a prestigious Prime Minister Shram Bhushan Award where cash prize of Rs.50,000/- was paid but still he has a grievance that his case has been ignored as these awards has not been taken note of by the DPC.

4. The applicant also allege that his junior Shri G. Gopakumar who has been given promotion has stolen march over him though he was not in the consideration zone when the DPC had met for considering the case for promotion to the post of General Manager. The applicant pointed out that when the DPC was held there were only 8 vacancies for the post of Senior General Manager and the consideration could confine to only 20 members of the service whereas Shri G. Gopakumar, respondent No.4 had been picked up who was still far away from the consideration zone. Thus it is stated that the applicant is entitled to be promoted from the date his immediate junior has been promoted and it has been so held in the earlier OA also, but in review DPC again the applicant has been deliberately ignored.

5. The respondents who are contesting the OA submitted that since the applicant had challenged the promotion in the earlier OA so the present OA suffers from res judicata/constructive res judicata since the matter has been previously agitated and disposed of.

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6. It is further stated that the impugned order has been passed after taking into consideration all the aspects of the earlier OA 1055/2001 and a review DPC was duly conducted in accordance with the judgments and instructions on the subject and the gradings and other particulars of all the officers were placed before the review DPC. The recommendations of the review DPC did not empanel the applicant for promotion. It is also stated that there are several other officers who were senior to Shri G. Gopakumar who have also been left out on the basis of the grading awarded to Shri G. Gopakumar over and above his seniors.

7. It is further stated that it is the prerogative of the DPC to give its own remarks over the performance of officer and no judgment about his performance can be agitated before the court of law since the power and responsibility for assessing his performance rests with the superior.

8. The respondents still maintain that the applicant was found fit to be a 'very good' officer but could not be accommodated as the number of vacancies were not sufficient and whereas Shri G. Gopakumar was an outstanding officer and in accordance with the then instructions Shri G. Gopakumar was to be placed at S.No.1 being an 'outstanding' officer.

9. The DPC was held in consultation with the UPSC which consisted of Chairman, UPSC, Secretary, Defence Production and Chairman, Ordnance Factory Board and



decision of the DPC has been taken after full appreciation of the contents of the orders passed in the earlier OA filed by the applicant. Thus it is stated that the case of the applicant had been considered but he could not be accommodated for sufficient number of vacancies and as such OA is liable to be dismissed.

10. We have heard the learned counsel for the parties and gone through the records of the case.

11. The learned counsel for the applicant has raised two-fold contentions to assail the recommendations of the DPC. The first contention is that Shri G. Gopakumar was not in the consideration zone and he could not have been considered. On this aspect, the learned counsel for the respondents maintained that Shri G. Gopakumar was in the consideration zone and he had been rightly considered and assuming for the sake of arguments that Shri G. Gopakumar was not in the consideration zone but still the applicant was not entitled to be promoted as till the date of his retirement no vacancy had become available. In this regard the learned counsel for the respondents referred to para 4.5 of the counter-affidavit which gives the details as to how and on which the date the vacancy had fallen vacant and how it has been filled up. The details is reproduced hereinbelow for easy reference:-

Vacancy on promotion	Occupied by	Filled by
1.4.95	Retired of Sh.A.K. Neogi	Sh.G. Gopakumar
1.4.95	Promotion of Sh.D. Rajagopal	Sh.VR Shivkumar

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23

1.8.95	Retirement of Shri V. Palanipandi	Sh.SR Sridharan
1.8.95	Promotion of Shri M. L. Dutta	Sh.PU Bhavikatti
1.10.95	Promotion of Sh.S. Ramaswamy	Sh.R.S. Mishra
1.10.95	Promotion of Sh.V. N.S. Mathur	Sh.K. Sampath
1.12.95	Retirement of Sh.M. L. Dutta	Sh.N.K. Bandopadhyay
6.1.96	Promotion of Sh.S. Mitra	Sh.R.N. Mehtani

12. The learned counsel for the respondents pointed out that it is not disputed that except Shri G. Gopakumar all other persons are senior to the applicant and if we remove Shri G. Gopakumar from the scene as if Shri G. Gopakumar was not in the consideration zone then also all those officers who had been given promotion would have gone a step higher and in that event also the last candidate who had been promoted is Shri R.N. Mehtani who is senior to the applicant. Sh. Mehtani would have gone to the place of Shri N.K. Bandopadhyay who was given a vacancy dated 1.12.1995 and since Shri R.N. Mehtani was given a vacancy dated 6.1.1996. But it is an admitted case of the applicant that he had superannuated on 31.10.1995 so at best he could have been accommodated in the vacancy dated 6.1.1996 but as on that date he was not in service so he could not be given promotion earlier than that date. Had any of his juniors have been accommodated in any vacancy earlier to 31.10.1995 then the applicant did have some case. But here even the two seniors to the applicant had been given promotion after 31.10.1995 so if Shri G. Gopakumar is removed from the scene then also the applicant did not have any right to be considered as by that time he would

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have already retired. Thus we are of the considered view that in the circumstances applicant cannot claim to have a right against any of the vacancy which had occurred after his superannuation so no writ should be issued for holding a review DPC since Shri G. Gopakumar was not in the consideration zone.

13. The next contention of the applicant that he had earned various commendation certificates and even got various awards highlighting his achievements while working as General Manager of Ordnance Factories and the same has not been taken into consideration by the DPC. We find that this contention of the applicant has no merits because the court cannot sit over the judgment of the DPC. The respondents have placed on record the proceedings of the DPC which does mention that the entire record of the officers were placed before the DPC and it is the DPC who had to adjudge the performance of the each individual candidate and this court is not required to sit over the judgement of the DPC for granting various gradings to the candidates who were in the consideration zone. Had the DPC adjudged the applicant as an outstanding officer then probably the applicant could have been placed even above his seniors and it is Shri G. Gopakumar who has been adjudged as "outstanding" so he was placed above applicant because the applicant had been assessed as "very good" and various other officers who had been assessed as very good so he could have got the vacancy below his immediate senior and by that time the applicant had already retired. Thus we find that the department had rightly informed the applicant vide impugned order that he could not be given promotion due to insufficient number of vacancies, as such no fault can

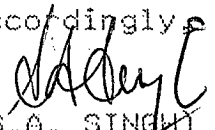
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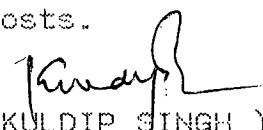
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be found with imugned order.

14. In view of the above, OA is bereft of any merits and the same does not call for any interference.

Accordingly, the same is dismissed. No costs.


(S.A. SINGH)
MEMBER (A)


(KULDIP SINGH)
MEMBER(JUDL)

Rakesh