

Central Administrative Tribunal, Principal Bench

O.A. No. 2729/2003

New Delhi this the 31st day of January, 2005

HON'BLE MR. JUSTICE M.A. KHAN, VICE CHAIRMAN (J)
HON'BLE MR. D.R. TIWARI, MEMBER (A)

M.R. Satyarthi, DPA 'B'
GS/ADGIS/TMS (UH)
West Block-III, R.K. Puram,
New Delhi.

Applicant

By Advocate: Shri U. Srivastava.

Versus

Union of India Through
The Joint Secretary (Trg.) & CAO,
Ministry of Defence,
C-II Hutments, Dalhousie Road,
New Delhi-110 011.

Respondent

By Advocate: Shri R.N. Singh proxy for Sh. S.K. Gupta

ORDER

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

The applicant has filed this OA for setting aside the order dated 20.11.2002 and 23.4.2002 whereby his representation was rejected; for a declaration that the adverse remarks in the ACR of the applicant are illegal, unjust, unconstitutional and are liable to be quashed and; for placement of the applicant in the next higher grade as Programmer w.e.f. 4.10.1994 when his juniors were given similar placement in terms of order dated 29.5.2002 and the direction of the Hon'ble High Court in CWP No.1312/1999.

2. Briefly, the facts are that the applicant was appointed as Investigator on 5.7.1983 in National Sample Survey Organization. Subsequently, he joined the respondent

department on 5.2.1987 as Statistical Assistant in the pay scale of Rs.1400-2300. The applicant proceeded on deputation to the office of Management Studies, Army Headquarters and held the post of Record Analysis w.e.f. 28.2.1989. While he was on deputation, senior-most Statistical Assistants, who were re-designated as DEO 'D' vide Government of India's letter dated 8.1.1999, were granted ad hoc appointment to the post of DPA 'B' for a period of six months from 13.11.1991. The applicant was repatriated from deputation to the office of the respondent on 4.3.1992. He was also granted ad hoc appointment to the grade of DPA 'B' w.e.f. 14.5.1992 for a period of six months. On expiry of the said period of six months, his ad hoc appointment was not continued. The applicant was placed as DPA 'B' w.e.f. 4.10.1994 in the pay scale of Rs.2000-3200 pursuant to the order of the Government of India dated 6.12.1994. However, this order was later cancelled. The ad hoc appointment of others was extended and their services were regularised on the post of DPA 'B' in 1994. The applicant, however, was promoted as DPA 'B' in 1999. While his other colleagues were promoted to the higher post of Programmer in the year 2001, the applicant has been given this promotion w.e.f. 4.3.2003. Representations made by the applicant have since been rejected by the order which is impugned, hence this OA.

3. The respondent contested the OA. A preliminary objection was raised that the OA is barred by principles of res judicata, the limitation prescribed and it is also barred by Rule 10 of the CAT (Procedure) Rules, 1987. In the counter, it was pleaded that the senior-most Statistical Assistants were given ad hoc promotions as DPA 'B' for a period of six months from 13.11.1991. The applicant was also given ad hoc promotion for six months w.e.f. 13.5.1992 when he came back to the office of the respondent on

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repatriation from deputation post. The authorities considered extension of the ad hoc appointment but was not found fit by the Screening Committee. The applicant was also considered by the regular DPC held on 9.9.1994 for promotion to the grade of DPA 'B' on regular basis but the DPC did not recommend his name for regular appointment because of the adverse entries in his ACRs. The applicant had filed OA No.753/1995 and the Tribunal by order dated 25.1.1996 disposed off holding that certain remarks in the ACRs of the applicant were adverse. Restructuring of the EDP cadre and revision of pay was brought about vide Government of India letter dated 6.12.1994 whereby DEO-D was re-designated as DPA 'B' with some preconditions. Six Statistical Assistants who became DEO-D pursuant to the letter dated 8.1.1991 including the applicant, were then placed as DPA 'B' w.e.f. 4.10.1994 by order dated 21.2.1997. The placement was on the basis of the educational qualification/specific requirement. Some persons, senior to these persons who were not placed as DPA 'B', challenged this order in OA 2520/1997. The Tribunal quashed this placement. Consequently all six DPA 'B' who were placed in the grade of DPA 'B' on the basis of letter dated 6.12.1994 were reverted to the grade of DEO-D. When the promotion was made on the basis of the existing Recruitment Rules for DPA 'B', out of above mentioned six persons who were later reverted, only three including the applicant could be promoted to the grade of DPA 'B' w.e.f. 31.3.1999. The applicant became eligible for promotion to the grade of Programmer after 2 years of regular service as DPA 'B' and he was considered and promoted to the grade of Programmer w.e.f. 4.3.2003.

4. In the rejoinder, the applicant reiterated his own case and denied the averments made in the counter.



5. We have heard the learned counsel for the parties and have also gone through the record.

6. The applicant's claim is as follows:-

(i) While he was away on deputation, some of his colleagues who were DEO 'D' were promoted as DPA 'B' on ad hoc basis for a period of six months w.e.f. 13.11.1991. The applicant should have also been granted the benefit of this ad hoc promotion by virtue of next below rule, On repatriation to the office of the respondent on 3.3.1992, he has already been granted ad hoc promotion for six months w.e.f. 13.5.1992. While the term of ad hoc appointment of others was extended from time to time but the ad hoc appointment of the applicant was not extended beyond the first term of six months.

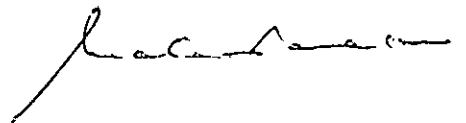
(ii) The applicant was placed in the grade of DPA 'B' w.e.f. 4.10.1994 on account of restructuring of the EDP cadre. He ought to have been placed in that grade since 1989. His placement w.e.f. 4.10.1994 was also cancelled.

(iii) While other DEOs were granted regular promotion in 1994, the applicant was superseded on the premises that there were some adverse remarks in his ACRs, which were illegal and should be quashed and

(iv) Other DPA 'B' were promoted to the higher grade of Programmer in 2001 but the applicant had been given this promotion w.e.f. 4.7.2003.

7. As regards the relief claimed in para 8(b) of the OA, suffice to mention that the question of expunction of adverse remarks in the ACR of the applicant itself was decided by an order of this Tribunal dated 25.1.1996 passed in OA 753/1995. It was held as follows:-

“ The remarks recorded in the ACR which have been communicated to him for the period in question has graded him as an average officer.



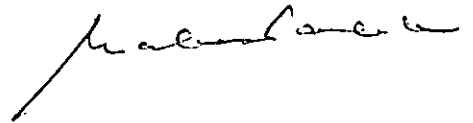
The Tribunal is not competent to expunge that remark, on the basis of the file produced before the Tribunal. This grade is recorded by the reporting officer. The reporting officer while recording the remarks has categorised his performance as satisfactory in many columns and in one column it is good and his integrity is 'beyond doubt'. For the grading, the reporting officer has called him an average worker. The grading given by the reporting officer and also endorsed by the reviewing officer cannot be expunged. There is nothing wrong in having great ambition but it should not be vaulting ambition. There is nothing wrong in being ambitious. The remarks that he adopts middle of the road cannot be treated as an adverse remark. The only portion that is adverse is 'the organizational tasks completion'. Searching greater pastimes or avenues for personal growth in itself is not bad. It is bad if it infringes on the duties and responsibilities assigned to an employee. It would be still worse if it affect the organizational task completion. It is a personal opinion given by the reviewing officer. The position is that while seeking interview, Major Gen. AOJ, Systems Department, has admitted that the applicant was lacking in his performance due to medical problem or due to searching avenues elsewhere. This did affect his performance of duties in the organization to which he was allocated. This is personal impression of the reviewing officer after watching his work and conduct. On merits it would be difficult to expunge these remarks particularly taking a synoptic view of the facts and circumstances of this case. The other portion will not be treated as an adverse remark. Only this portion which is treated as adverse will stand in the ACR".

8. This order as such has attained finality. The question of adverse ACR was directly and substantially in issue and it was decided by the Tribunal. The order is binding upon the parties to the OA. The applicant is not permitted to reagitate the matter in the present OA. Such a plea is barred by principles of res judicata.

9. With regard to the contention of the applicant that while he was working on a deputation post, his colleagues were given ad hoc promotion to a DPA 'B' post for six months which was subsequently extended and that he ought to have been granted ad hoc promotion under next below rule, to our view, has no force. The counsel for the applicant could not show any rule which required the application of next below rule in

the case of ad hoc promotion. Next contention of the applicant is that while the six months ad hoc promotion of other employees was extended till the regular appointment was made to DEP 'B' post in the year 1994, the applicant's ad hoc appointment for a period of six months w.e.f. 13.5.1992 was not similarly extended. The reply of the respondent is that the authorities had considered the question of extension of the term of ad hoc appointment of the applicant also but did not find him fit for extension. Counsel for the respondents stated that the applicant had earned adverse remarks in his ACR which were taken into consideration by the authorities. The adverse remarks in the ACR of the applicant were not expunged. Rather the order of the Tribunal dated OA 753/1995 aforementioned, has put a seal over it. The authorities thus had material before them, which was taken into consideration against the extension of ad hoc appointment of the applicant. The ad hoc appointment did not vest any legally enforceable right in the applicant for extension particularly when the decision of the authorities was based on the material consideration of the ACR and the conduct of the applicant. The Tribunal will not sit in appeal over the administrative action of the respondent nor would it direct the extension of the ad hoc appointment of the applicant after 13.11.1992 now in 2005. The contention of the applicant has no merit.

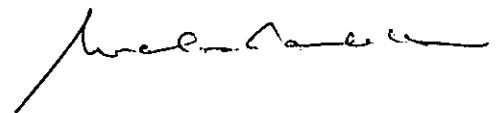
10. Another grievance of the applicant is that in 1997 the applicant was placed as DPA 'B' w.e.f. 4.10.1994 but this placement was subsequently cancelled and he was reverted to the lower grade. The applicant has himself alleged that some of his colleagues who were not given the placement in DPA 'B' Grade had challenged the order in OA No.2520/1997 which was allowed. As a consequence, the respondent had no option to



cancel the placement of the applicant and five others in DPA 'B'. The respondent cannot be faulted for it.

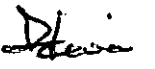
11. Yet another contention of the applicant is that while his other colleagues were selected and were promoted in the grade of DPA 'B' in 1994, he was discriminated and was not given the promotion. The applicant has not disputed that the regular promotion was granted to others by a Departmental Promotion Committee, which had not recommended the applicant for promotion because of adverse entry in his ACR. It is the reason for the applicant to challenge that adverse entry in the present OA also. There are, as such, valid reasons for the applicant being not promoted to the grade of DPA 'B' along with some of his other colleagues. The only right of the applicant was that he should be considered for promotion. He had been considered for promotion by a duly constituted Departmental Promotion Committee. The Committee has not recommended his name. The respondent cannot be faulted if he was not promoted along with others.

12. The applicant has admitted that he was subsequently promoted as DPA 'B' with effect from 31.3.1999. His further grievance is that while other DPA 'B' were granted promotion to the next higher grade of Programmer in the year 2001, he had been discriminated against and had not been given such promotion. He has not denied that as per the Recruitment Rules the applicant became eligible for promotion to the grade of Programmer after rendering 2 years of regular service in DPA 'B' grade. It has also not been denied that after he fulfilled the eligibility condition, he was considered for promotion and has also been granted promotion to the grade of Programmer w.e.f. 4.3.2003. As such, the order of the respondent dated 23.4.2002 read with order dated



20.11.2002, challenged in this OA, do not suffer from any legal infirmity. The applicant is not entitled to grant of any relief in the OA.

13. The result is that the OA has no merit and the same is dismissed but without any order as to costs.


(D.R. TIWARI)
MEMBER (A)


(M.A. KHAN)
VICE CHAIRMAN (J)

Rakesh