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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**W.P.(C) 949/2016**

Date of decision: 17<sup>th</sup> February, 2016

A.K. PASWAN

..... Petitioner

Through Mr. U. Srivastava, Advocate.

versus

UNION OF INDIA AND ORS

..... Respondent

Through Mr. Rajesh Gogna, CGSC for R-1  
to 4.

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**SANJIV KHANNA, J. (ORAL)**

1. A.K. Paswan impugns order dated 28<sup>th</sup> April, 2015, passed by the Central Administrative Tribunal, Principal Bench, New Delhi, whereby his Original Application No.1128/2012 has been dismissed. The petitioner by the aforesaid original application challenged the propriety and validity of the communication dated 16<sup>th</sup> February, 2012, rejecting the petitioner's claim for antedating his promotion to the rank of Assistant Central Intelligence Officer-I/WT. The petitioner also questioned letter dated 7<sup>th</sup> March, 2012, rejecting his representation for a copy of the reply dated 4<sup>th</sup> July, 2007. The said letter dated 7<sup>th</sup> March, 2012, records that the document was confidential in nature and,

therefore, cannot be furnished.

2. Assured Career Progression Scheme (ACP Scheme) introduced and implemented from 9<sup>th</sup> August, 1999, directs grant of financial upgradations to the next promotional post on completion of 12<sup>th</sup> and 24<sup>th</sup> year of service, where no promotion has been granted to the said employee in the regular course.

3. The petitioner was recruited as Assistant Central Intelligence Officer-II/WT on 29<sup>th</sup> July, 1991 and as he had not been promoted, became eligible for the first ACP in the year 2003. However, he was then facing disciplinary proceedings and the Screening Committee in its meeting held on 4<sup>th</sup> December, 2003, had followed the sealed cover procedure in terms of the OM dated 14<sup>th</sup> September, 1992.

4. In the departmental enquiry, vide order dated 5<sup>th</sup> December, 1994, the petitioner suffered a penalty of withholding of two increments for a period of two years without cumulative effect.

5. Consequently, the sealed cover recommendations were not acted upon in terms of the OM dated 14<sup>th</sup> September, 1992.

6. The petitioner was subsequently granted first ACP with effect from 18<sup>th</sup> July, 2007, on the recommendations of the Screening

Committee meeting held on 18<sup>th</sup> July, 2007.

7. The petitioner got regular promotion as Assistant Central Intelligence Officer-I/WT (ACIO-I/WT) on 5<sup>th</sup> May, 2008.

8. The grievance of the petitioner is that his batch mates and juniors were promoted to the next higher post of Deputy Central Intelligence Officer (Tech)/WT vide order dated 28<sup>th</sup> June, 2011 while the petitioner's request for antedating promotion was not granted. Instead, second financial upgradation under MACP was granted to the petitioner vide order dated 16<sup>th</sup> August 2011.

9. The petitioner was undoubtedly considered for promotion to the post of Assistant Central Intelligence Officer (Tech)/WT by the Departmental Promotion Committee for the years 2005-06, 2006-07 and 2007-08, but was not recommended on the ground of unsuitability. Respondent Nos.5 to 12, who were found suitable and fit, were promoted superseding the petitioner. Resultantly, respondent Nos.5 to 12 became senior to the petitioner in the rank of Assistant Central Intelligence Officer-I/WT, which is the feeder post to the post of Deputy Central Intelligence Officer (Tech)/WT.

10. The petitioner was promoted as Assistant Central Intelligence

Officer-I/WT pursuant to the recommendations of the Departmental Promotion Committee for the year 2008-09 with effect from 5<sup>th</sup> May, 2008. The petitioner was granted second financial upgradation with effect from 29<sup>th</sup> July, 2011 vide order dated 16<sup>th</sup> August, 2011.

11. The petitioner did not question and challenge recommendations of the Departmental Promotion Committee for the years 2005-06, 2006-07 and 2007-08, for a long time. It is only after the petitioner was granted second ACP vide order dated 16<sup>th</sup> August, 2011, that he, for the first time, raised the question of his seniority viz. respondent Nos.5 to 12 in the post of Assistant Central Intelligence Officer-I/WT.

12. The challenge, it is apparent to us, was highly belated and was after a considerable delay.

13. The Tribunal in the impugned order has examined the factual matrix in detail and has noted and highlighted that the petitioner has been punished twice. The first punishment suffered by the petitioner was vide order dated 5<sup>th</sup> December, 1994, when he was awarded penalty of withholding of two increments for a period of two years without cumulative effect. The second penalty was imposed by order dated 17<sup>th</sup> February, 2004, directing reduction of pay by one stage for a period of

one year with cumulative effect, which was modified by the appellate authority by order dated 22.03.2005 to the penalty of reduction of pay by two stages for a period of one year with a further direction that the petitioner would not earn increments of pay during the period of reduction and on expiry of the same, reduction will have effect of postponing future increments of his pay. The allegation against the petitioner in the second charge sheet was that he had extorted \$ 100 from a passenger for giving immigration clearance.

14. The Tribunal has also referred to the ACRs considered by the Screening Committee and the Departmental Promotion Committee for the years 1998-99 to 2006-07 and have quoted the same in paragraph 11 of the impugned order. The contention of the petitioner that he was declared fit for grant of ACP by the Screening Committee with effect from 18<sup>th</sup> July, 2007, and therefore he should not have been declared unfit or unsuitable for promotion by the Departmental Promotion Committee for the years 2005-06, 2006-07 and 2007-08, has been specifically rejected after examining the facts and in terms of the reasoning given in paragraph 12 of the impugned order. Annual gradings of the petitioner have been noticed and adverted to. The impugned order

records that a seniority list was circulated on 6<sup>th</sup> May, 2009, and as the petitioner was promoted to the post of ACIO-I/WT vide order dated 5<sup>th</sup> May, 2008, his seniority had dipped to Sr. No.182 while respondent Nos.5 to 12 had been placed at Sr. Nos.82 to 89.

15. The factual position is that the procedure prescribed in circular dated 14<sup>th</sup> October, 2010 with respect to the uncommunicated, below the benchmark ACRs was complied with. Noticing the aforesaid facts, the Tribunal in paragraph 14 of the impugned order has recorded as under:-

14. ....It is to be noted that the applicant has also been found fit w.e.f. 2011. However, the applicant having rendered junior to respondent nos. 5 to 12, as shown in the above Table, he has not been considered for promotion by the DPC. For the time being, we have to rest content that the assertions of the respondents that his turn will come in order of seniority either in his category where he figures at sl. No.21 or in the general list where he figures at sl. No.73. We are confident that when a DPC is convened, the applicant along with others would be considered by the respondents. We are also to hold in this regard that the seniority list on the basis of recruitment is not sacrosanct but it is the seniority with which persons enter the service. However, it does not prevail for all times to come. It is subject to certain changes depending upon the performance of the applicant in service. A person, who is promoted earlier, even though he may be junior to the applicant in recruitment, shall supersede him and take precedence over him in the matter of seniority, thereby making him eligible for promotion earlier. Therefore, we find nothing unusual in it nor we find that any rights of the applicant have been infringed.”

16. The aforesaid reasoning and details given by the Tribunal in the

impugned order takes an extensive and across view of the career and service records of the petitioner, narrates the factual position that the Screening Committee had granted benefit of the first ACP to the petitioner by giving financial upgradation, whereas the Departmental Promotion Committee had gone on other aspects relating to suitability. The indulgence by awarding and granting financial upgradation, it is observed, would not be a sound ground and reason to hold that the Departmental Promotion Committee should have also held that the petitioner was fit and suitable for promotion. On consideration of various facets and aspects, the petitioner was not declared fit for promotion in the Departmental Promotion Committee meetings for the years 2005-06, 2006-07 and 2007-08.

17. The writ petition has no merit and is accordingly dismissed.

**SANJIV KHANNA, J.**

**NAJMI WAZIRI, J.**

**FEBRUARY 17, 2016**  
**NA**