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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.404 OF 2010

Cuttack this the 21st day of December, 2011

Dr.P.C.Samal...Applicant

-VERSUS-
Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be referred to CAT, PB, New Delhi or not ?

(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER

(A.K.PATNAIK)
JUDICIAL MEMBER

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No. 404 of 2010

Cuttack, this the 21st day of December, 2011

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER(A)
AND
THE HON'BLE MR.A.K.PATNAIK, MEMBER(JUDL)

Dr.P.C.Samal, aged about 62 years, Son of Hare Krishna Samal, At-
Sreekunja Apartment, Flat No.001, PO.Arunodaya Nagar Markot,
Khannagar, Cuttack-753012.

.....Applicant

By Legal Practitioner: M/s.K.P.Mishra,
Ms.S.Mohapatra,
L.P.Dwivedy,
T.P.Tripathy,
Counsel.

[1] Union of India represented through the Secretary, Government of India,
Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi-110
001.

[2] Secretary, Union Public Service Commission Dholpur House,
Sahajahan Road, New Delhi-110 011.

.....Respondents

By legal practitioner: Mr.U.B.Mohapatra, SSC
Mr.R.C.Bhera, ASC
Mr.J.K.Khandaitray, ASC

O R D E R

A.K.PATNAIK, MEMBER(J):

The Applicant [Dr.P.C.Samal] who belonged to General Duty Medical Officer [in short 'GDMO'], Sub cadre of Central Health Services [in short 'CHS'] had earlier approached before the Principal Bench of the Tribunal seeking to quash and set aside the action of the Respondents in downgrading his ACRs for the years 2002-03 & 2003-04 as 'Good' in comparison to ACRs for the year 2000-01 and 2001-02 which were 'Very Good'. He had sought to quash and set aside the proceedings of DPC held on 2nd, 3rd and 4th July,

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2007 in which he was ignored in the matter of promotion to the post of Senior Administrative Grade [in short 'SAG'] of Central Health Service. The matter was heard and disposed of by the PB of the Tribunal on 19th December, 2008.

The operative part of the order reads as under:

"3. In view of what has been observed above, we direct the respondents to convey to the applicant his ACRs for the years 2002-03 and 2003-04 within a period of one month from today with liberty to the applicant to make his representation against such ACRs. In case the applicant makes representation against such ACRs, the respondents will take a decision thereon within a period of two months from the date they receive such representation of the applicant. Surely, if the applicant succeeds in upgrading his aforesaid ACRs, he shall be considered for promotion to the post of Senior Administrative Grade by the review DPC."

The aforesaid order of the Tribunal was challenged by the Respondent No.1 before the Hon'ble High Court of Delhi in WP (C) No.9044 of 2009. But the same was dismissed on 19.5.2009 by the Hon'ble High Court of Delhi. In compliance of the order of the Tribunal upheld by the Hon'ble High Court, the Applicant was communicated Xerox copy of the ACRs for the year 2002-03 and 2003-04 on receipt of which the applicant preferred representation dated 25.9.2009 vide Annexure-A/6 to the OA seeking up gradation of his ACRs from 'Good' to 'Outstanding/Very Good'. But the said request of the Applicant having been turned down vide OM No.A.28017/13/2009-CHS-V dated 26th April,2010, the Applicant has preferred this Original Application U/s.19 of the A.T. Act, 1985 seeking to quash the OM under Annexure-A/7 dated 26th April, 2010 by concurrently holding the rejection of his representation as bad, illegal and cannot be sustainable or maintainable in the eye of law and to direct the Respondents to promote the applicant to the post of SAG with all monetary benefits.

2. Respondent No.1[Secretary, Government of India, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi] has filed counter objecting to the prayer of the applicant. It has been stated that in compliance of the order of the Tribunal as upheld by the Hon'ble High Court of Delhi, the Applicant was duly supplied with the attested photocopy of the ACRs of the relevant years. Applicant submitted his representation seeking up gradation of the grading made in his ACR of the relevant years. Upon receipt of the representation views of the concerned Reporting as well as Reviewing Officer were sought. Thereafter, Respondent No.1 considered the representation of the Applicant with reference to the available records and comments of the Reporting & Reviewing Officers but could not find any justification to upgrade the ACR of the Applicant of the relevant periods. Accordingly, the decision taken by the Respondent No.1/competent authority on the representation of the applicant was conveyed to him vide OM dated 26.4.2010. Hence, Respondent No.1 has prayed for dismissal of this OA.

3. Respondent No.2 [Secretary, UPSC, Dholpur House, Sahajahan Road, New Delhi] has filed a separate counter in which it has been stated that the UPSC being an advisory body set up under Article 315 of the Constitution of India has the duty to see whether the selection for promotion has been made in accordance with the Rules and instructions. The Respondent No.2 has nothing to do with regard to the grading given in the ACRs of an Officer/up- grading the ACRs of an individual by the Reporting and Reviewing Officer which are purely an administrative matter to be decided by the concerned Ministry/Department, as per the relevant and extant Rules/instructions. Hence, the Respondent No.2 refrained from making any comments on the decision of the Respondent No.1 in rejecting the request of the Applicant for

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up grading the grading in the ACRs from good to outstanding/very good.

Accordingly, Respondent No.2 has prayed for dismissal of this OA.

4. Applicant, besides reiterating some of the stand taken in his Original Application, in the rejoinder, has stated that DPC for promotion to SAG cadre was held in July, 2007 and bench mark 'very good' came into effect only on 18th February, 2008 in Annexure-R/6. Hence, denial of promotion to the applicant due to lack of bench mark 'Very Good' was not justified. Denial of promotion by taking into account un-communicated ACRs and belated communication is illegal, has been taken as one of the grounds in his rejoinder to justify his claim made in the OA. Accordingly, Applicant has reiterated his prayer made in the OA.

5. The contention of Ms.Mohapatra, Learned Counsel for the Applicant is that though the Applicant was within the zone of consideration, his case was not considered by the DPC for the un-communicated below bench mark grading in his ACRs for the years 2002-03 & 2003-04 and the applicant was superseded by his juniors. According to the Applicant's Counsel there was no adverse remarks in the ACRs of the applicant during the relevant preceding five years. It has been contended by the Applicant's Counsel that recording the grading as 'Good' in the ACRs of the Applicant of the years 2002-03&2003-04 is not the true reflection of the performance of the applicant. The Reporting Officer recorded such grading without having any personal knowledge on the performance of the applicant. There was/is no material or reason to rate the applicant as 'Good' for the above years. Therefore, according to the Applicant's Counsel the grading 'Good' ought not to have been treated as adverse so as to deny the applicant his legitimate due for promotion. Her contention is that if the grading 'Good', according to the Respondents was adverse in nature, the authority ought to have

communicated the same before denying him promotion by taking into consideration such remarks. Having not done so and communication of the remarks after the promotion of his juniors by the order of the Tribunal upheld by the Hon'ble High Court of Delhi being bad in law, the Applicant is entitled to promotion retrospectively from the date when his juniors were promoted to the said grade. Further contention of the Applicant's Counsel is that bench mark 'very good' came into existence vide Annexure-R/6 dated 18th February, 2008 whereas DPC was convened for promotion much prior to the date of introduction of the bench mark 'very good' and, as such, the applicant ought not to have been denied the promotion due to lack of the bench mark 'very good'. Next contention of the Applicant's Counsel is/was that the uncommunicated good grading should have been ignored and the applicant should have been promoted to SAG as per the decisions of the Hon'ble Apex Court in the case of Devi Dutta V Union of India (2008) 8 SCC 725 and Abhijit Ghosh Dastidar V Union of India. Learned Counsel for the Applicant did not forget to lay emphasis on the stand taken by the Respondent No.1 in the counter that the reporting officer while denying to review his comment in the ACR of the year 2004 has stated that he has no objection if the applicant is considered for promotion to the post of SAG and contended that in view of the above comments the case of the applicant should have been reconsidered for promotion to SAG and had his case been reconsidered since meanwhile he has retired from service [30-11-2008], he would have got financial assistance by way of arrears for leading a peaceful retirement life. In course of hearing Learned Counsel for the Applicant has also reiterated belated communication of ACRs and writing of ACRs is not free from bias as grounds in support of the prayer made in this OA.

On the other hand, the arguments advanced by Ms. Mohapatra, Learned Counsel for the Applicant were vehemently opposed by Learned Counsel appearing for the Respondent Nos. 1&2. While reiterating the stand taken by the Respondents in the counter it was contended by them that the Applicant is estopped under law to retrieve what has happened prior to the order of the Tribunal upheld by the Hon'ble High Court of Delhi. As per the orders of the Tribunal the applicant was communicated attested photocopy of the ACRs for the relevant years. He submitted representation and comments of the concerned Reporting and Reviewing Officers were duly obtained. After considering the points raised by the Applicant in his representation vis-à-vis the materials available on records and the comments of the Reporting and Reviewing Officer, the competent authority rejected the prayer for up gradation of the grading made in his ACRs for the relevant years and communicated the decision in a well reasoned order. It was contended by the Respondents' Counsel that the order under Annexure-R/6 was a communication to subordinate authority for strict observance of the bench mark while considering the cases for promotion. It was misconception on the part of the applicant that for the first time bench mark very good was introduced through this order. Hence, while strongly denying the other allegations of bias etc. raised by the Applicant, Respondents' Counsel have reiterated their prayer made in the counter that this OA being devoid of any merit is liable to be dismissed.

6. We have considered the rival submissions of the parties and perused the materials placed on record. Law is well settled in a plethora of judicial pronouncements that Tribunal lacks jurisdiction to interfere in the assessment/recording/grading given/made in the ACRs of an employee except it is conclusively established that such remarks were recorded in

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violation of the statutory rules, tainted with malice or for that matter the authority reported upon such remark/grading is not competent to do so. Or else, interfering in the grading/recording as a matter of routine by the Tribunal would tantamount to acting as an appellate authority of the authority competent to record the remarks. Except bald allegation of bias, no impeachable material has been produced by the Applicant in support of his allegation that the recording of remarks was without the personal knowledge of the reporting officer or the recording was bias. It is trite law that people are prone to make such allegation but Tribunal owe a duty to scrutinize the allegation meticulously because the person who is making the allegation of animus may be bona fide or sometimes *mala fide* due to his un-success. Hence we reject the plea of the applicant that recording or rejection of the representation of the applicant for up gradation was tainted with bias. It is seen that on receipt of the representation the competent authority sought the comments from the Reporting as well as Review Authority and thereafter considered the representation of the applicant with reference to the materials available on record vis-à-vis the comments of both the officers and intimated the applicant in a reasoned order. Similarly, we do not agree with the contention of the applicant that since bench mark very good was introduced through Annexure-R/7 i.e. much after the DPC, the DPC ought not to have refrained from recommending the case of the applicant for promotion due to lack of bench mark very good because Annexure-R/7 is the reiteration for strict observance and was not issued first time introducing the grading very good for promotion to SAG. We also agree with the Respondents' Counsel that the Applicant is estopped under law, in view of the earlier order of this Tribunal upheld by the Hon'ble High Court to state that as per the decision of the Hon'ble Apex Court he should have been straightaway considered for

promotion by ignoring the un-communicated below bench mark grading good.

We may state that ACRs is the reflection of performance and ability to work of an employee. Therefore, grading in the ACRs and up-gradation of the grading are purely within the domain of the authority as the same is based on the performance and ability to work by an employee. As the authority rejected the prayer for up gradation and we find no reason to interfere with the same, prayer for promotion to SAG cadre obviously falls to the ground.

7. In view of the above, we find no merit in this OA. This Original Application is accordingly dismissed by leaving the parties to bear their own costs.



(C.R. MOHAPATRA)

Member (Admn.)



(A.K. PATNAIK)

Member(Judl.)