CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.Nos.37, 42, 43, 44, 45 & 70 of 2012
Cuttack this the 22nd day of July, 2014

IN O.A.No.37/2012
Madhusudan Mohanta...Applicant

IN O.A.No.42/2012
D.K.Padhi...Applicant

IN O.A.No.43/2012
G.Mohanty...Applicant

IN O.A.No.44/2012
J.K.Mohanty...Applicant

IN O.A.No.45/2012
H.K.Sahoo...Applicant

IN O.A.No.70/2012
P.Sahoo...Applicant

-Vs.-

Union of India represented & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? yes

2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? yes

(R.C.MISRA)
MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.Nos.37, 42, 43, 44, 45 & 70 of 2012
Cuttack this the 22nd day of July, 2014

CORAM
HON'BLE SHRI R.C.MISRA, MEMBER(A)

IN O.A.No.37/2012
Sri Madhusudan Mohanta,
Aged about 59 years,
S/o-Late Moheshwar Mohanta
Vill/P.O-Padua, P.S-Baria,
Dist-Keonjhar,
Presently working as Officer Surveyor,
Orissa, G.D.C,
Survey of India,
Khandagiri,
Bhubaneswar,
Dist-Khurda.

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

-VERSUS-

Union of India represented through

1. The Secretary to Government of India,
Ministry of Science & Technology,
Technology Bhawan,
New Meharauli Road,
New Delhi-110016.

2. The Surveyor General of India,
Surveyor General's Office,
Hathibarkala Estate,
Post Box No.37,
Dehradun,
Uttarakhand-248001.

3. The Director,
Survey of India,
Survey Bhawan,
Bhubaneswar-13.

...Respondents

By the Advocate(s)-Mr.D.K.Behera

IN O.A.No.42/2012
Sri Dilip Kumar Padhi,
Aged about 60 years,
S/o-Late Panchanan Padhi
Presently residing at Plot No.HIG.II/48
At-Kapilaprasad, B.D.A.Colony,
Bhubaneswar,
Dist-Khurda-751 002

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

-VERSUS-

Union of India represented through

1. The Secretary to Government of India,
Ministry of Science & Technology,
Technology Bhawan,
New Meharauli Road,
New Delhi-110016.

2. The Surveyor General of India,
Surveyor General's Office,
Hathibarkala Estate,
Post Box No.37,
Dehradun,
Uttarakhand-248001.

3. The Director,
Survey of India,
Survey Bhawan,
Bhubaneswar-13.

...Respondents

By the Advocate(s)-Mr.D.K.Behera

IN O.A.No.43/2012
Sri Ganeswar Mohanta,
Aged about 61 years,
S/o-Late Ramahari Mohanta

Presently residing at Plot No.857/4 (SN/72),
At-Shivanagar,
Bhubaneswar,
Dist-Khurda-751 018

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

-VERSUS-

Union of India represented through

1. The Secretary to Government of India,
Ministry of Science & Technology,
Technology Bhawan,
New Meharauli Road,
New Delhi-110016.

2. The Surveyor General of India,
Surveyor General's Office,
Hathibarkala Estate,
Post Box No.37,
Dehradun,
Uttarakhand-248001.

3. The Director,
Survey of India,
Survey Bhawan,
Bhubaneswar-13.

...Respondents

By the Advocate(s)-Mr.L.Jena

IN O.A.No.44/2012
Sri Jugal Kishore Mohanty,
Aged about 62 years,
S/o-Late Bairagi Ch.Mohanty
Presently residing at Plot No.C-60, Lingaraj Vihar,
Pokhariput
Bhubaneswar,
Dist-Khurda-751 020

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

-VERSUS-

Union of India represented through

1. The Secretary to Government of India,
Ministry of Science & Technology,
Technology Bhawan,
New Meharauli Road,
New Delhi-110016.

2. The Surveyor General of India,
Surveyor General's Office,
Hathibarkala Estate,
Post Box No.37,
Dehradun,
Uttarakhand-248001.

3. The Director,
Survey of India,
Survey Bhawan,
Bhubaneswar-13.

...Respondents

By the Advocate(s)-Mr.S.Barik

IN O.A.No.45/2012
Sri Hemanta Kumar Sahoo,
Aged about 61 years,
S/o-Bhikari Sahoo
Presently residing at Plot No.VIM-92
Sailashree Vihar
Bhubaneswar,
Dist-Khurda-751 021

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

-VERSUS-

Union of India represented through

1. The Secretary to Government of India,
Ministry of Science & Technology,
Technology Bhawan,
New Meharauli Road,

New Delhi-110016.

2. The Surveyor General of India,
Surveyor General's Office,
Hathibarkala Estate,
Post Box No.37,
Dehradun,
Uttarakhand-248001.

3. The Director,
Survey of India,
Survey Bhawan,
Bhubaneswar-13.

...Respondents

By the Advocate(s)-Mr.B.K.Mohapatra

IN O.A.No.70/2012
Sri Purusottam Sahoo,
Aged about 59 years,
S/o-Late Satyananda Sahoo
Permanent Resident of Dimbo,
PS-Keonjhargarh, Keonjhar
Presently working as Officer Surveyor,
Orissa, G.D.C,
Survey of India,
Bhubaneswar,
Dist-Khurda-751 013

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

-VERSUS-

Union of India represented through

1. The Secretary to Government of India,
Ministry of Science & Technology,
Technology Bhawan,
New Meharauli Road,
New Delhi-110016.

2. The Surveyor General of India,
Surveyor General's Office,
Hathibarkala Estate,
Post Box No.37,

Dehradun,
Uttarakhand-248001

3. The Director,
Survey of India,
Survey Bhawan,
Bhubaneswar-13.

...Respondents

By the Advocate(s)-Mr.M.K.Das

ORDER

R.C.MISRA, MEMBER(A)

Since the point to be decided arises out of the same and similar facts and circumstances, this common order will govern all the Original Applications mentioned above. For the sake of reference, the facts mentioned in O.A.No.37 of 2012 are being dealt with.

2. Applicant in O.A.N.37 of 2012, presently working as Officer Surveyor under the Respondent No.3 has approached this Tribunal seeking the following relief.

i) To quash letter/order dated 03.01.2012(Annexure-A/7) passed by the Respondent No.2

ii) To direct the Respondents to up-grade the ACR remark from "Good" to "Very Good" for the relevant years from 2003 – 09.

iii) To direct the Respondents to extent the benefit as due and admissible after Up-grading the remarks in the ACR

iv) To pass any other order/orders as deemed fit and proper in the circumstances of the case and for ends of justice.

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3. Shorn of unnecessary details, the facts of the matter are that initially, applicant joined as TTT 'A' on 28.10.1974 under the Respondent-Organization, ~~which~~ and he was classified as Surveyor with effect from 1.10.1976 on completion of two years training. He was granted 1st and 2nd financial benefits under the ACP Scheme with effect from 09.08.1999 and 01.10.2000 respectively, in the pre-revised scale. According to applicant, in the meantime, he has already completed 30 years of regular service and 10 years service in a particular pay scale with one ACP benefit and one promotion and thus, he was entitled to 3rd MACP with effect from 1.9.2008. Since this benefit was not extended to him, he made a representation to Respondent No.2, i.e., the Surveyor General of India on 23.12.2010 followed by a reminder dated 01.03.2011. In response to his representations, Respondent No.2 vide letter dated 31.3.2011 intimated to the applicant that MACP could not be considered in his case as there were below benchmark grading in his ACRs. He was therefore, advised by the Respondent No.2 to make representation for the review of his ACRs. According to applicant, this is for the first time that he could come to know about the below benchmark grading to have been awarded in his ACRs by the Respondent No.3, i.e., Director, Survey of India, Bhubaneswar. On getting the communication of Respondent No.2, applicant sought for the ACRs for the last seven years from 2003 onwards and submitted a representation on 21.4.2011 to Respondent No.2 for reviewing his ACRs and also for grant of the benefit of 3rd MACP. This representation was

not considered in time by the Respondent No.2 and therefore, the applicant approached this Tribunal in O.A.No.707/11. This Tribunal, vide order dated 24.10.2011 disposed of the said O.A. at the stage of admission with direction to Respondent No.2 to consider the pending representation and pass a reasoned and speaking order as per rule, within a stipulated time under intimation to the applicant. Complying with the above direction of this Tribunal, Respondent No.2, vide order dated 3.1.2012 (Annexure-A/7) rejected the prayer of the applicant for upgradation of ACRs from Good to Very Good pertaining to the years 2003 to 2009, which is impugned herein and is the subject matter of challenge.

4. Applicant has assailed Annexure-A/7, by forcefully pointing out that the order of Respondent No.2 herein cannot be treated as a speaking and reasoned order, because for similarly placed five other persons, who had approached this Tribunal for the same relief and ~~their~~ whose representations were directed to be considered and disposed of, as a measure of compliance, Respondent No.2, had passed the same order as has been issued in the present O.A. in a mechanical manner. It has therefore, been alleged that Respondent No.2 has never considered the representation with due application of mind, but passed orders ~~in~~ with a pre-conceived notion by summarily rejecting the prayer of the applicant for upgradation of ACRs. It is the further case of the applicant that in the ACRs pertaining to the years 2003 to 2009, there was no specific remark which would reflect adversely on the effectiveness and integrity of the

applicant. Therefore, any final grading that has been given below benchmark is totally unjustified and unreasonable, particularly when it has an adverse effect on the career prospects of the applicant. Further, it has been submitted that this action of the Respondents also goes against the settled principle of law laid down by the Hon'ble Apex Court in Dev Dutt vs. Union of India (AIR 2008 SC 2513), which is further clarified by the Hon'ble Apex Court in Abhijt Ghosh Dastidar vs. Union of India & Ors (2010) 1 SCC (L&S) 959).

5. Based on the above grounds, applicant has prayed for the relief as referred to above.

6. Opposing the prayer of the applicant, Respondents have filed their counter reply. Perusal of the counter reply reveals that the applicant was granted the 1st financial upgradation under ACP Scheme from 09.08.1999 and 2nd financial upgradation under ACP scheme from 1.10.2000 in the pre-revised scale of pay. Applicant under the new MACP Scheme is eligible for consideration under 3rd financial upgradation since he has completed 30 years of regular service on 30.09.2006. His case was accordingly taken up but it was found that remarks in his ACRs from the year 2003 to 2009 contained below benchmark grading. In accordance with the DOP&T O.M.No.21001/1/2010-Estt. dated 13.4.2010 and OM of even No. dated 27.4.2010, copies of the above mentioned ACRs were provided to the applicant calling upon him to make representation, if any. Applicant submitted his representation dated 21.4.2011 to the Surveyor General

of India. While his representation was under consideration, he filed O.A.No.707/2011 before this Tribunal and the matter was disposed by the Tribunal with direction to the Surveyor General of India to consider and dispose of the pending representation and pass a speaking and reasoned order. Thereafter, in compliance of the direction of the Tribunal, Respondent No.2 vide order dated 3.1.2012 considered the matter and rejected the appeal of the applicant for upgradation of the ACRs grading. 7. Rebutting the various allegations made by the applicant, Respondents have pleaded that there is no allegation ~~of~~ on the basis ~~on~~ of which the applicant can challenge this order and since the matter has now been considered by the appellate authority who is higher than the reviewing authority of the above mentioned ACRs, hardly there is any case to be interfered with. It is further submitted that the applicant is eligible for getting 3rd financial upgradation for which Departmental Screening Committee is to be held. However, the Committee will consider the ACRs of the preceding five years and assess whether the applicant is fit or not fit for grant of 3rd MACP. The benchmark for grant of financial upgradation under MACP is Very Good and therefore, applicant will not be found fit for the 3rd MACP because of the below bench mark grading. It is also the case of the Respondents that the appellate authority has considered the representation of the applicant on merit and did not find it justified to upgrade the ACR grading from below benchmark to benchmark grading. This has been done based upon the performance of the applicant during the relevant periods

without any malice or bias and therefore, there is no justifiable reason for upgrading ACRs of the applicant. The concerned authority has also taken all the facts carefully into consideration before rejecting the prayer for upgradation. This matter, according to Respondents, does not warrant any interference by the Tribunal since the grading is given on the basis of performance of the concerned officer.

8. With regard to the communication of remarks in the ACRs, it is pleaded in the counter reply that vide OM dated 13.4.2010, the DOP&T while reiterating that prior to the reporting period of 2008-2009 only adverse remarks in the ACR had to be communicated to the concerned officer for representation, if any, considered the question of treating the grading in the ACR which is below the benchmark for next promotion and decided that if an employee is to be considered for promotion in a future DPC and his ACRs prior to the period 2008-09 which would be reckonable for assessment of his fitness in such future DPC contained final grading which are below bench mark for his next promotion, before such ACRs are placed before the DPC, the concerned employee will be given a copy of the relevant ACR for his representation.

9. With these submissions, Respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

10. In the rejoinder to the counter filed by the applicant, it has been submitted that the ACRs for the periods in question were never communicated to him and therefore, rejection of his case for MACP on the basis of uncommunicated ARCs is illegal and unjustified. While

considering the applicant's representation dated 23.12.2010, for extending the benefit of financial upgradation under MACP, the Respondent No.2 regretted the same and communicated the reasons along with the ACRs of the relevant years to the applicant. Till such communication was made on 8.4.2011, at no point of time, the Respondents had ever communicated ACRs to the applicant. In this regard, the learned counsel for the applicant has brought to my notice the DOP&T circular dated 02.03.1968, the relevant portion of which reads as under.

> "There may be cases, where though the remarks in the C.R.are not adverse in a strict or narrow sense the effect of these remarks cumulatively on the service prospectus of the officer are adverse (e.g. fall in the standards of officers performance as compared to his past performance). In such cases, the attention of the officer should be specifically drawn to that fact, so that he could be altered for improving his performance".

11. Applicant's counsel has assailed the order of rejection as an outcome of non application of mind and also due to ignorance of law. According learned counsel, even though the remarks in the ACRs are not adverse in a strict or narrow sense the effect of these remarks cumulatively on the service prospects of the applicant being adverse, in view of the settled position of law laid down by the Hon'ble Apex Court in Abhijhit Ghosh Dastidar regarding impact on non-communication of the remarks, the impugned order of Res.No.2 is unjust and illegal.

12. I have heard the learned counsel for the applicant and the learned ACGSC appearing on behalf of the Respondents, separately in all the O.As. I have also gone through the reply to rejoinder as well as written note of submissions filed by the parties in support of their respective contentions.

13. Indisputably, applicant is eligible to grant of 3rd MACP w.e.f. 1.9.2008. It is also not in dispute that the applicant falls below the benchmark grading in his ACRs for grant of 3rd MACP. In the above backdrop, he was provided with the ACRs for the period from 2003 to 2009 containing the below benchmark grading, in pursuance of DOP&T O.M. dated 27.4.2010, calling upon him to make representation, if any, and the applicant, responding to that submitted his representation on 21.4.2011. This representation having not been considered, this gave rise to filing of O.A.No.707/2011 by the applicant before this Tribunal and as per the direction of the Tribunal, Respondent No.2 considered and rejected the representation vide order dated 3.1.2012. The relevant portion of the order of rejection dated 3.1.2012 reads as under.

> " The facts submitted by Shri M.S.Mohanta in his representation and comments from the initiating/Reviewing Officers and Director concerned have been considered by me. I, the undersigned, representation dated 21.04.2011, comments/report of the Reporting/Reviewing Officer, other facts and circumstances of the case and material placed before, am of the opinion that the Reporting/Reviewing Authority has recorded his assessment and overall grading with due diligence based on the performance of the officer during the period in question without any malice or bias, and there are no reasons/justification to intervene for changing the assessment overall grading. Shri M.S.Mohanta Officer

survey has not submitted any material evidence/records in support of his claim for upgradation of the remarks contained in his ACRs for he period in question.

ORDER

The representation dated 21.04.2011 submitted by Shri M.S.Mohanta, Officer Surveyor for up gradation of 'Good' grading contained in his above said ACRs and the comments of the concerned reporting/reviewing officer and the director concerned, have been considered by me in depth. From the documentary evidence and records placed before me, I am of the considered view that there is no reason warranting me to upgrade the "Good" grading to "Very Good" in his ACRs for the years, 2003, 2004, 2005, 2006, 2007, 2008 and 2009. The appeal is therefore, REJECTED".

14. First of all, ACRs containing remarks "Good" are of continuous period of seven years, i.e, from 2003 to 2009 and the same were communicated to the applicant only in the year 2010, when the matter of consideration of 3rd MACP was taken up and his ACRs were found wanting in terms of benchmark grading. Therefore, prima facie, it is established that applicant has been denied the opportunity of making any representation against such remarks in the nick of the time, because, the communication was not made apparently for the reason that grading "Good" was not strictly being construed an adverse grading. However, by the efflux of time, from the year 2003 to 2009 recurrence of such remarks in the ACRs has resulted in a cumulative situation having an adverse effect on the service career of the applicant. There is no doubt about the fact that the applicant was in the dark about the recurrence of below benchmark grading by his superior authority, prejudicial to his interest. In this regard, it is indispensable to

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carefully consider the extract of DOP&T OM dated 2.3.1968, which has been quoted earlier.

15. The spirit of this OM which says that even though the remarks in the C.R. are not adverse in a strict or narrow sense the effect of these remarks cumulatively on the service prospects of the officer are adverse (e.g. fall in the standards of officers performance as compared to his past performance), in such cases, the attention of the officer should be specifically drawn to that fact, so that he could be altered for improving his performance. In the instant case, the benchmark required for 3rd MACP is "Very Good" whereas the applicant has been awarded the grading "Good" continuously from 2003 to 2009, which is below benchmark without his knowledge and thus, finally a situation prejudicial to his interest has resulted in. Such a situation could have been prevented had the Respondents made proper communication at the right point of time. When this has not been done, it will be prima facie concluded that a fair treatment has not been meted out to the applicant.

16. Now coming to the disposal of representation by Respondent No.2, it is seen that this was done only after the direction was issued by the Tribunal in O.A.No.707/2011. The speaking order issued by Respondent No.2, as quoted above, does not appeal to the judicial conscience that the said order has been passed with due application of mind. The order does not bring to fore what were the views or comments of the Reporting Officer, Reviewing Officer and the Director

concerned and what were those materials available before him and what were the extant rules which were taken into consideration while issuing the impugned order of rejection. Further, the impugned rejection order does not disclose the reasons as to whether the Respondents were within their right to act on the uncommunicated ACRs in the face of the fact that the applicant was eligible for grant of 3rd MACP with effect from 1.9.2008. Viewed from this,, Para-3 of the speaking order under no circumstances can be said to be a reasoned and speaking order as it does not deal with each of the points as indicated above. This apart, it was incumbent on the part of Respondent No.2 to put it in black and white as to why below benchmark grading was never communicated to the applicant to improve his performance. It is no doubt a fact that remark "Good" is not to be construed as adverse. However, over a period of time, if an incumbent is being awarded over all grading 'Good' and the authorities are aware that such continuous remark will affect his future prospects, a duty is cast on the Respondents to communicate such remark so as to improve his performance, as in the instant case, the applicant.

17. It goes without saying that the Tribunal is not supposed to assess the performance of an employee nor can it issue a specific direction for awarding a specific grading in the ACR. It is the concerned authorities who are to understand the basic spirit of writing ACRs. ACR is not in the nature of a judgment based on the character and performance of an employee. It is a tool available in the hands of the authorities to guide

and improve the concerned employee in his future performance. Therefore, it has been repeatedly emphasized that ACRs should not be mechanically recorded, but it should be recorded with due application of mind which in the long run will help the employee to improve his performance in future.

18. Considering the view points as mentioned above, I am of the opinion that order dated 3.1.2012 issued by Respondent No.2 is tainted with flaw and infirmity as apparently it has been issued in a cyclostyled form and therefore, the same is not sustainable in the eye of law. Accordingly, impugned order dated 3.1.2012 in all the OAs are quashed and set aside and the matters are remitted back to Respondent No.2 to reconsider the whole issue and pass appropriate orders, in the light of the directives as under.

i) Respondent No.2 shall reconsider the matter having regard to DOP&T circular dated 2.3.1968, as quoted above.

ii) Respondent No.2 shall in particular deal with the situation as to whether withholding of 3rd MACP due to the applicant w.e.f. 1.9.2008 on the basis of uncommunicated ACRs was just and proper.

iii) During the course of reconsideration, Respondent No.2 shall also take into account the date with effect from which minimum benchmark "Very Good" came into force as the criterion for grant of MACP in so far as applicant is concerned.

iii) Respondent No.2 shall in his order make it conspicuous specifically as to what were the views/comments of the Reporting Officer, Reviewing Officer, Director concerned as well as the materials available before him and the extant rules governing the field.

iv) If in the process of reconsideration, applicant is assessed to be awarded the grading upto the level of benchmark, he

shall be so awarded with a view to removing the bottleneck for grant of MACP.

19. It is further directed that Respondent No.2 shall deal with the matter in respect of each of the applicants independently.

The above exercise shall be completed within a period of three months from the date of receipt of this order.

20. With the aforesaid observation and direction, all the O.As are disposed of. No costs.

(R.C.MISRA)
MEMBER(A)

BKS