

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 542/2005

Friday, this the 21st day of April, 2006.

CORAM:

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER

PP Raju,
S/o Purushothaman,
Aged 54 years, Welder,
Integrated Fisheries Project,
Ernakulam.

Applicant

By Advocate Mr MR Hariraj

v.

1. Union of India represented by
the Secretary,
Government of India,
Ministry of Agriculture,
Department of Animal Husbandry
and Diarying,
Krishi Bhavan,
New Delhi-110 001.
2. The Director in Charge,
Integrated Fisheries Project,
Kochi-682 016.
3. The Joint Secretary(Fy),
Krishi Bhavan,
New Delhi-110 001.

- Respondents

By Advocate Mr Sunil Jose, ACGSC

The application having been heard on 12.4.2006, the Tribunal on 21.4.2006
delivered the following:

ORDER

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

In this application, the applicant seeks the relief of second Assured
Career Progression (ACP) benefits with effect from 24.8.2000, which he missed



allegedly due to certain adverse ratings in the Confidential Records.

2. The applicant is Shri PP Raju working as Welder, Integrated Fisheries Project, Ernakulam. He commenced service as such with effect from 24.8.1976 under the second respondent, Director In-Charge, Integrated Fisheries Project, under Government of India, Ministry of Agriculture. He ~~has~~ ^{has} had no promotion and hence ~~is~~ ^{was} a claimant for the first and second financial upgradation under the ACP scheme on the completion of 12 and 24 years of service respectively. Vide A-2 document No.A1/1-2/97/Part IV/1507 dated 9.8.2000, he was informed that the DPC constituted for the grant of ACP scheme considered his case and came to the conclusion that he did not possess the required bench mark in ACRs and hence his case was deferred. Aggrieved by this order, he filed O.A.1047/2001. Vide A-3 order dated 20.2.2004 in the said O.A, inter alia, it was observed "ACRs for five years, 1994-95, 1995-96, 1996-97, 1997-98 and 1998-99 were material for evaluating the performance of the applicant and that all ACRs were good except for 1998-99 where the grading was an average worker". It was also found by the Tribunal that the grading 'average' per se was not adverse. The Tribunal noted that the Hon'ble Supreme Court in U.P. Jal Nigam v. Prabhath Chandra Jain and others [1996 2 SCC 363] ~~had~~ declared that adverse remarks shown in the ACRs would have to be communicated to the officer concerned before taking such remarks into consideration for any purpose. Inasmuch as four out of five entries were 'good' and the remaining alone 'average' which was not communicated to him, he should not be denied the ACP benefits. Thus the Tribunal directed that he was entitled to the first financial upgradation from 9.8.99. Consequently, the applicant was given the first financial upgradation from 9.8.99. In the same A-4 order granting this benefit, others who were his juniors were given second financial upgradation. According to the applicant, the due date for second upgradation is 24.8.2000, (24 years reckoned from 1976, the year of entry into service by him) and the check period is 1995-96, 1996-97, 1997-98, 1998-99 and 1999-2000. During 1999-2000, he was awarded the



penalty of censure communicated to him vide A-5 document dated 9.11.99. Besides this, he was issued a charge memo vide A-6 document dated 16.3.2001 and the enquiry pursuant thereto was still pending. Vide A-7 document dated 14.6.2001, following adverse remarks were communicated to him for the year 2000-01:

"Amenability to discipline - Below average"

"Overall assessment - Below average".

He preferred an appeal vide A-8 document dated 27.7.2001. Again, the respondents communicated vide A-9 dated 18.8.2003 following adverse remarks for the year 2002-03.

"amenability to discipline - Below average"

He had preferred an appeal against these adverse remarks also vide A-10 representation dated 15.9.2003. He had made subsequent representations for granting him second ACP benefit vide A-11 and A-12 representations dated 14.6.2004 and 8.9.2004. Subsequently, A-1 impugned memo was issued, informing the applicant that the Screening Committee which met on 4.4.2005 considered his case for second ACP and found that he was not fit for the same due to the declining trend in the ACR. According to the applicant, this order is in pursuance of his A-12 representation. Challenging the A-1 memo, he has come before this Tribunal.

3. The reliefs sought by him are to quash A-1 memo and to grant him second ACP with effect from 24.8.2000 with all the consequential benefits. His grounds are as follows:

i) The service records from 1995-2000 alone are relevant for the purpose of second ACP, the order of censure or the present enquiry having nothing to do with the same.

ii) It is perceived that the adverse entries at A-7 for 2000-01 and A-9 for 2002-2003 have been factored into by the Committee to form the conclusion of not granting the II ACP vide A-1 order; such factoring



was illegal as the timing was outside the check period and his appeals are yet to be disposed of.

4. The respondents oppose the application on the following grounds:

(a) One of the conditions for grant of ACP scheme is the fulfillment of ~~preconditions for~~ all the promotions, viz, bench mark, departmental examinations, seniority-cum-fitness etc.

(b) In the case of the applicant, the departmental committee considered his case in its first sitting on 22.11.99. In view of the minor penalty due to misconduct and of the overall grading of 'average', the committee decided to defer the case. A review was undertaken on 30.9.2000, 22.9.2001 and 9.4.2002. In all these meetings, it was found that his overall grading was 'average' and his work performance was on a declining trend.

5. The point to be decided is what was the check period for the grant of second ACP benefits. The applicant avers that the due date for the second upgradation is 24.8.2000 and the ACRs to be considered relate to the preceding five year period 1995-96, 1996-97, 1997-98, 1998-99 and 1999-2000. No rules relating to either the reference date or the check period was brought as part of the material papers. The above averment of the applicant has not been contested by the respondents. The averments of the respondents raise a doubt whether the above check period did remain static at all. This is because, according to the respondents, the case of the applicant was considered in review in meetings held on 30.9.2000, 22.9.2001, 9.4.2002 and 4.4.2005. In all these meetings, the committee found that the decision to grant him the ACP was deferred due to declining work performance and his overall reading was also 'average'. In fact, the specific finding in the impugned A-1 order was, ".....the official is not fit for the grant of second ACP due to the declining trend (emphasis supplied) in the ACR". As already noted, in the A-3 order in O.A 1047/2001 it was observed that "It is seen that all ACRs are good except for



1998-99 where the Reporting Officer has written an 'average worker'. Four consistent good entries followed by a single 'average' rating cannot be considered to constitute a declining trend, within the meaning of the expression as referred to in the impugned memo. This leads us to the inevitable assumption that the check period must be shifting depending upon the date of convening of the Screening Committee. This is fortified implicitly by the averment of the respondents in the reply statement, making a reference to pendency of certain enquiry proceedings and adverse entries for the year 2000-01 communicated by A-7 dated 14.6.2001 and adverse entries for the year 2002-03 communicated by A-9 dated 18.8.2003. If the check period has so shifted, then the applicant would aver that he had represented against the same, which remain undisposed of. This is countered by the respondents who say such representations have been addressed to the wrong persons. Even if it is so, it is the bounden duty of such officers who wrongly received the representations, to return the same to the applicant for taking corrective action. They should certainly not keep the representations pending without any action. This would mean that the adverse entries have not reached finality, which in turn would mean that they cannot be treated as a relevant input for deciding on his second ACP claim.

6. In this connection, it is worthwhile recalling here the law laid down by the Hon'ble Apex Court in this regard, in the following cases, which have been brought to our notice by the learned counsel.

In Brij Mohan Singh Chopra v. State of Punjab [(1987) 2 SCC 188] it has been laid down "There is no doubt that whenever an adverse entry is awarded to government servant it must be communicated to him. The object and purpose underlying the communication is to afford an opportunity to the employee to improve his work and conduct and to make representation to the authority concerned against those entries. If such a representation is made it is imperative that the authority should



consider the representation with a view to determine as to whether the contents of the adverse entries are justified or not. Making of a representation is a valuable right to a government employee and if the representation is not considered, it is bound to affect him in his service career, as in government service grant of increment, promotion and ultimately premature retirement all depend on the scrutiny of the service records..."

In *Gurdial Singh Fiji v. State of Punjab* [(1979) 2 SCC 368] – it has been laid down "*The principle is well settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. Unfortunately, for some reason or another, not arising out of any fault on the part of the appellant, though the adverse report was communicated to him, the government has not been able to consider his explanation and decide whether the report was justified.*" and in *Amar Kant Choudhary v. State of Bihar* [(1984) 1 SCC 694] – it has been laid down "*..adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Unless the representation against the adverse entry is considered and disposed of it is not just and fair to act upon those adverse entries. These decisions lay down the principle that unless an adverse report is communicated*



and representation, if any, made by the employee is considered, it cannot be acted upon to deny promotion. We are of the opinion that the same consideration must apply to a case where the adverse entries are taken into account in retiring an employee prematurely from service..."

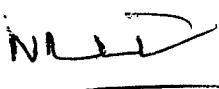
7. We find therefore that in view of the above law, it would be not proper to treat the adverse remarks of A-7 and A-9 as the final necessary inputs for determining the eligibility of the applicant for the grant of second ACP. The proper course would have been to dispose of the representations one way or the other as per the extant rules/orders/instructions and only such final disposals should be factored into any decision to decide his eligibility for the said benefit.

8. Hence we order that A-1 is quashed and direct that any representations made by the applicant against the A-7 and A-9 adverse entries be duly considered by the appropriate authorities concerned within a period of two months from today as per the extant instructions and rules and based upon such disposal, the Screening Committee shall within two months thereafter, duly decide upon the question of granting the applicant the benefits of the second ACP.

9. With these directions the O.A is disposed of. No costs.

Dated, the 21st April, 2006.


GEORGE PARACKEN
JUDICIAL MEMBER


N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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