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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NOS. 90 AND 93 OF 2003

Friday, this the 7th day of May, 2004.

CORAM;

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

HON'BLE MR K.V.SCAHIDANANDAN, JUDICIAL MEMBER

O.A.No.90/2003

K.V.Anandan,
Stenographer Grade III,
Films Division,
Trivandrum.

- Applicant

By Advocate Mr MR Rajendran Nair

Vs

1. Branch Manager,
Films Division,
CGO Complex,
Poonkulam.P.O.
Trivandrum-695 022.
2. Officer in Charge(Distribution),
Films Division,
24 Peddar Road,
Mumbai-400 026.
3. Sr.Administrative Officer,
Films Division,
24 Peddar Road,
Mumbai-400 026.
4. Director of Administration,
Films Division,
24 Peddar Road,
Mumbai-400 026.
5. Union of India represented by
Secretary to Government of India,
Ministry of Information & Broadcasting,
New Delhi.

- Respondents

By Advocate C.B.Sreekumar, ACGSC

O.A.93/2002

K.V.Anandan,
Stenographer Grade III,
Films Division,
Trivandrum.

- Applicant

By Advocate Mr MR Rajendran Nair

Vs

1. Union of India represented by
Secretary to Government of India,
Ministry of Information & Broadcasting,
New Delhi.
2. Director of Administration,
Films Division,
24 Peddar Road,
Mumbai-400 026.
3. Senior Administrative Officer,
Films Division,
24 Peddar Road,
Mumbai-400 026.
4. Branch Manager,
Films Division,
CGO Complex, Poonkulam,
Vellayani.P.O.
Trivandrum-32.

- Respondents

By Advocate C.B.Sreekumar, ACGSC

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant has been working as Stenographer Grade-III since 1975 in Film Division, Mumbai/Trivandrum under the Ministry of Information and Broadcasting. He is attached to the first respondent since 1979. He has filed O.A.90/2003 challenging the adverse entries in the Annual Confidential Report(ACR for short) of 1999-2000. The applicant has also filed O.A.93/2003 in which the central issue is the denial of the benefit of Assured Career Progression Scheme (ACP) on the alleged ground that the Screening Committee on verifying his service records did not find him fit for grant of financial

upgradations envisaged under the ACP scheme. As the two O.A.s filed by the applicant would involve consideration of inter-related facts, we consider it appropriate and expedient to take up the two cases for disposal by a common order.

2. Relevant facts in O.A.90/2003 are: The applicant commenced his service as Stenographer Grade-III in 1975. By A-1 communication dated 6.11.2000 the applicant was informed of certain adverse entries in his ACR for 1999-2000. The applicant's representation dated 4.12.2000 to the 2nd respondent was rejected by A-3 memo dated 31.7.2001 which, according to the applicant, is a nonspeaking order. While the applicant's detailed representation A-4 dated 22.11.2001 was pending, he received A-5 memo dated 21.6.2002 communicating certain adverse entries for 2000-2001. As per A-6 memo dated 4.9.2002, the applicant was advised to submit his explanation through proper channel. The applicant made A-7 representation dated 30.9.2002 in response to which he was informed that the expunction of the adverse remarks for 2000-2001 was under consideration vide A-8 memo dated 12.11.2002.

3. The applicant maintains that in view of his consistently good record, the respondents should have furnished some more details with regard to the adverse entries in the ACR for 1999-2000. Entries are vague and are vitiated by legal malafides as no warning had ever been given to him. The adverse entries have no factual basis as no confidential document/matter and no responsibility to maintain engagement-diary or schedule of meetings were entrusted to

him. There is no specific allegation regarding any unauthorised disclosure of secret information. Nor is there any instance of indiscipline pointed out, it is urged. The applicant would further submit that the adverse entries for 2000-2001 are only a bid to justify refusal of grant of ACP benefit. The applicant seeks this Tribunal's orders quashing A-1 and also A-3 to the extent it affirms the adverse entries against clauses, 5, 6 and 7 of the ACR for the year 1999-2000.

4. In their reply statement, the respondents have maintained that the O.A. is barred by limitation as admittedly the question of expunction of adverse entries in the ACR for 1999-2000 has been examined and rejected as per A-3 memo dated 31.7.2001. According to the respondents, assessment of the applicant's performance, as reflected in his ACRs, were decisive not only in matters pertaining to confirmation/promotion, Selection Grade etc., but also grant of benefit under the ACP scheme. The applicant does not have blemishless record as claimed since adverse observations have been made and communicated during the previous years vide R-1, 2, 3, 5 memos. It is stated by the respondents that since the reports were written by various Reporting Officers at different point of time there could be no allegation of arbitrariness or unreasonableness in the performance evaluation. However, an objective assessment of the performance of the applicant was made for the year 1999-2000 without reference to the previous year's performance. Since the applicant was attached to the 1st respondent, he had to deal with important policy matters of sensitive and

confidential nature demanding high degree of discretion. It is also pointed out by the respondents that the applicant has not been regular in his attendance at the Hindi classes for which he was detailed. For the purpose of grant of ACP, performance records for a period of 5 years, i.e. 1993 to 1998 were taken into consideration. The Screening Committee took note of the records including the unexpunged adverse entries for 1999-2000 and held the applicant unfit for the grant of ACP benefit. According to the respondents, the representation against the adverse entries for the year 1999-2000 had been rejected as per A-3 dated 31.7.2001 and therefore, the applicant could have no subsisting cause of action.

5. The applicant has filed a rejoinder wherein it is maintained that the O.A. is within the time limit with reference to applicant's A-4 representation dated 22.11.2001 addressed to the 4th respondent. It is urged that adverse entries, if any, of the prior years would have no effect on the applicant's career progression in view of the fact that he had been granted regular promotion in 1980 and also 1994 which were declined on account of compelling personal reasons. With regard to the basis of adverse entries, the applicant would submit that no sensitive matter had been entrusted to him, that no task of maintenance of diary of appointments and meeting was assigned to him and that not a single instance of breach of confidentiality has been pointed out. The applicant also would deny the allegation that nonattendance or making trouble in the Hindi classes. He has also denied the

allegation of disclosure of secret information. It is also revealed by the applicant that as per A-10 memo dated 7.10.2003 the applicant has been actually promoted to Grade-II with effect from 20.8.2001.

O.A. 93/2003

6. Briefly stated, the facts are: The applicant who completed 24 years of regular service as Stenographer Grade-III as on 9.8.1999 is aggrieved by the respondents refusal to grant him the financial upgradations under the ACP scheme introduced with effect from 9.8.1999. Admittedly, the applicant had been promoted twice earlier, on the first occasion, as Personal Assistant in 1980 and, on the second, as Stenographer Grade-II in 1994. On both the occasions, the applicant declined promotions for personal reasons. When the Government of India's ACP scheme as per O.M. dated 9.8.93 was implemented by the Ministry of Information and Broadcasting, A-2 order dated 4.8.2000 issued in that regard by the first respondent, did not contain the applicant's name. The applicant made A-3 representation dated 30.8.2000. By A-4 letter dated 1.1.2001, the Assistant Administrative Officer, Film Division, Mumbai informed the 4th respondent that on verifying the applicant's service records, the Screening Committee did not find him fit for grant of ACP and that therefore, it is not possible to grant him the financial upgradations under the ACP scheme. The applicant made A-5 representation dated 17.7.2001 pointing out that no adverse remark in ACRs for the years under report had been conveyed to him and that therefore the ACP benefit could not be denied to

him. By A-6 letter dated 13.12.2001, the 4th respondent justified the applicant's exclusion by the Departmental Screening Committee. To the applicant's further representation A-7 dated 6.5.2002 to the 2nd respondent, the 3rd respondent replied that the Screening Committee did not consider the applicant fit for grant of financial benefits under the ACP and that his case would be considered at the next Screening Committee meeting. According to the applicant, when the second Screening Committee met in May 2000 there was no material before the Committee to find the applicant unfit, as no adverse entries had been communicated to the applicant and as there was no enquiry against or punishment on the applicant was in force. He would therefore maintain that denial of ACP benefit is unsustainable. The applicant has prayed for the following reliefs:

i) Quash Annexure-A2 to the extent it does not give 1st and 2nd financial upgradation to the applicant.

ii) Quash Annexure-A4, A6 and A8 to the extent it does not give 1st and 2nd financial upgradation under ACP scheme with effect from 9.8.1999 and to direct the respondents to give the applicant 1st and 2nd financial upgradation under Assured Career Progression Scheme with effect from 9.8.1999 with all consequential benefits including arrears of pay and allowances with interest @ 18% per annum.

7. In their reply statement, the respondents have opposed the O.A. stating that the Departmental Screening Committee which met on 14.7.2000 for the purpose of grant of financial upgradation under the ACP scheme did not find the applicant fit on the basis of his performance/ACRs. Grant of ACP was subject to the fulfilment of norms prescribed therefor. While admitting that the adverse entries for 1999-2000 were communicated to the applicant only in November 2000 and not before the order, A-2 dated 4.8.2000 granting financial upgradations to eligible employees was issued. However, the Committee, while deciding the cases for grant of ACP benefit took into account ACR for the previous five years i.e. upto 1998-99. The Departmental Screening Committee did not consider the applicant fit for grant of financial upgradations under the ACP scheme. Since the applicant's representations have been considered by the second respondent and reasons for not granting the ACP benefit have been furnished in the replies given to the applicant, the relief prayed for in the O.A. cannot be granted, according to the respondents.

8. The applicant subsequently filed M.A.994/2003 producing A-9 order dated 7.10.2003 from the office of the third respondent granting promotion to the applicant as Stenographer Grade-II with effect from 20.8.2001 subject to the outcome of O.A.93/2003.

9. We have heard Shri M.R.Hariraj, learned counsel for the applicant and Shri C.B.Sreekumar, learned AGGSC. With reference to the grievance on account of the adverse entries

in the ACRs for 1999-2000 which is the subject matter of O.A.90/2003, Shri Hariraj would contend that the respondents have violated the instructions contained in Rule 174(9)(ii)(b) of the P&T Manual, Vol.III inasmuch as no details regarding the adverse entries in the ACR for 1999-2000 are furnished. The applicant had an unblemished record and therefore the respondents were bound to provide some verifiable details concerning the adverse entries in the ACR according to the learned counsel. Learned counsel would reiterate the applicant's plea that the adverse observations have no factual support as the applicant was not entrusted with any confidential or sensitive matter or maintenance of engagement dairy etc. and as no specific material regarding the alleged disclosure of information of secret nature has been furnished by the respondents. He would therefore strongly contend that the adverse entries were unsustainable. With regard to the issue of denial of ACP benefit raised in O.A.No.93/2003, the learned counsel for the applicant would submit that the applicant had put in more than 24 years as Stenographer Grade-III as on 9.8.1999 and that therefore, he was eligible for the 2 financial upgradations provided under the ACP scheme. When the impugned order A-2 dated 4.8.2000 granting the ACP benefits to Group 'C' employees under the first respondent was issued, the applicant was not in receipt of any communication of adverse remarks for any of the years under consideration. Hence the Departmental Screening Committee had no reason to deny him the benefit particularly in view of the admitted fact that the applicant's case along with other cases was placed before the Screening Committee in May 2000.

According to the learned counsel, there could be no ground other than the adverse entries for 1999-2000 for denying him the ACP benefit. The earlier records would not reveal anything that could adversely affect his claim since nothing adverse had ever been communicated and since he had otherwise fulfilled the norms prescribed for the grant of 2 financial upgradations under the ACP scheme. With regard to the specific adverse entries in the ACR for 1990-2000, it is contended by the learned counsel that the respondents having considered the ACRs upto 1998-99 could not act upon the uncommunicated and factually baseless adverse entries in the ACR for 1999-2000.

10. Shri CB Sreekumar, learned ACGSC relied on the reply statement filed in respect of O.A.No.90/2003 and 93/2003. Regarding the issue of adverse entries for the year 1999-2000 which is the subject matter of O.A.90/2003, learned ACGSC would state that the applicant's representation against the adverse entries was rejected as early as on 31.7.2001 and that as such he ought to have filed an O.A. within 18 months from that date. The O.A. therefore was barred by limitation. That apart, even on merits, the applicant's performance was objectively assessed and there is no material to show that it is vitiated by bias or procedural lapses. On that ground also the O.A. was liable to dismissed, the learned ACGSC would maintain. Regarding refusal to give ACP benefit which forms the basis of O.A.93/2003, the learned counsel for respondents would submit that for the purpose of financial upgradations under the ACP scheme, the employee should fulfil the criteria

laid down for normal promotion besides undergoing stagnation without promotion during the 12/24 year period. The Departmental Screening Committee considered the performance records including the ACRs of the applicant and other eligible officers when it met on 14.7.2000. The screening committee did not find the applicant fit on the basis of the applicant's performance and the ACRs and that led to his exclusion, as per order dated 4.8.2000 R-5. Learned ACGSC would submit that the applicant's representations were duly considered and on ascertaining the Screening Committee's comments, the applicant was informed that he could not be given the benefit of ACP as the Committee did not find him fit.

11. We have considered the facts and contentions with regard to O.A.Nos.90/2003 and 93/2003. As far as the issue of unsustainability of the adverse entries in the ACRs for 1999-2000 is concerned, we notice that as per the impugned A-3 memo dated 31.7.2001 read with the impugned A-1 memo dated 6.11.2000, the adverse remarks against Col.No.5 regarding trustworthiness in handling secret and top secret matters and papers, Col.6 pertaining to maintenance of engagement diary and timely submission of necessary papers for meetings, interviews etc. and Col.No.7 regarding general assistance in ensuring that matters requiring attention, stand unexpunged. A-3 dated 31.7.2001 was received by the applicant on 6.8.2001. The applicant's further representation A-4 dated 22.11.2001 to the 4th respondent viz, the Director(Administration), Films Division, Mumbai was pending when the O.A. was filed on 5.2.2003. Having regard to this factual position, we hold that the O.A. is not barred by limitation.

12. With regard to merits of the issue raised in respect of adverse remarks in the ACR, we notice that the applicant is not in a position argue that he had an unblemished record. His performance and general conduct had been adversely commented upon on earlier occasions though not with any adverse effect on his career prospects. So we are not persuaded to believe that his is a case of consistently good record. We are not inclined to hold that the provisions contained in Rule 174(9)(ii)(b) of the P&T Manual, Vol. III to the effect that where an adverse remark is recorded in respect of an official having consistently good record, some details regarding the same should invariably be given, would apply in this case. Further, we are not convinced that the adverse entries have been communicated as a bolt from the blue. The applicant's conduct and general attitude to work and assigned responsibilities and tasks seem to have weighed with the Reporting Officer. Copies of office memos R-8 would throw sufficient light on the respondents response to the attitude of the applicant to his duties and responsibilities as a Government servant. We are therefore not inclined to accept the plea that the adverse entries in the ACR were factually unsupported. Hence on merits, there is no case for interference in regard to the unexpunged adverse entries. No relief prayed for in the O.A. can be granted and the O.A. 90/2003 is liable to be dismissed.

13. On a consideration of the facts concerning the denial of the 2 financial upgradations envisaged under the ACP scheme that came into effect on 9.8.1999, which is the subject matter

of O.A.93/2003, we find that the impugned A-2 order dated 4.8.2000 is the very first order implementing the Government orders on the subject with regard to Group 'C' (Ministerial employees) of the respondent-organisation. The financial upgradations are granted to the employees who have completed 12 to 24 years during the period 9.8.99 to 30.6.2000. It is not disputed that the applicant had already completed 24 years as on 9.8.99. The respondents have not produced any material to show that the applicant had suffered any ineligibility during the 5 previous years the ACRS of which were considered for the purpose of grant of ACP benefit. Admittedly the Departmental Screening Committee constituted for the purpose of grant of ACP benefit had taken into account the ACRs for the 5 years ending with 1998-99 vide para 14 of the reply statement. The ACRs for 1999-2000 were clearly outside the purview for consideration for the purpose of grant of ACP. In other words, as on 9.8.99 the applicant did not have any adverse entry in his ACRs considered by the Departmental Screening Committee. For the purpose of conferment of financial upgradations under the ACP the norms for nonselection promotion are to be observed. It would have no effect on the seniority and other related privileges of the employees. In the absence of any material whatsoever to show that the Departmental Screening Committee was not in a position to identify any adverse remark or observation with regard to the applicant's performance as reflected in the ACRs for the 5 years ending with 1998-99, we are unable to sustain the impugned A-2 order in so far as it excludes the name of the applicant from the grant of ACP benefit. We therefore

hold that the applicant was eligible for grant of the financial upgradations envisaged under the ACP scheme since he had completed 24 years of regular service as on 9.8.99. In this context, however, we take note of the fact that the applicant was promoted as Personal Assistant as per R1 order dated 28.5.80 which was refused by the applicant on account of some personal reasons. All the same promotion was granted to him. Similarly, we also notice that the applicant had been promoted on the recommendation of a duly constituted DPC to the post of Stenographer Grade-II as per R-2 order dated 24.8.1994 which again was declined on account of personal reasons. These facts are not denied. Grant of ACP benefit is governed by the terms and conditions contained in the O.M. dated 9.8.99 and the subsequent clarifications in O.M. dated 10.2.2000 and 18.7.2001(vide R-3 and R-4). There are specific instructions regulating the grant of ACP including computation of the period of 12 years or 24 years, as the case may be, in a situation where an employee has declined promotion granted prior to the date of grant of the benefit. Since in this case, it is seen that the applicant did not avail of the promotions given to him in 1980 and in 1994, the eligibility period of 12 year/24 year and the effective due dates for grant of the financial upgradations have to be determined with reference to the relevant instructions. Subject to the above observations, we are of the view that the applicant is entitled to the two financial upgradations under the ACP scheme from the respective due dates.

14. On the facts and in the circumstances of the two cases discussed above, we dismiss O.A.90/2003 and dispose of

O.A.93/2003 by setting aside A-2, A-4, A-6 and A-8 orders to the extent those deny the benefit of the ACP scheme to the applicant and directing the respondents to grant the two financial upgradations under the ACP scheme with effect from the respective due dates. The respondents are directed to issue consequential orders giving effect to our findings on O.A.93/2003 within a period of three months from the date of receipt of copy of this order. There is no order as to costs.

Dated, the 7th May, 2004.

Sd/-
K.V.SACHIDANANDAN
JUDICIAL MEMBER

Sd/-
(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER

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