

**Central Administrative Tribunal, Lucknow Bench, Lucknow**

**Original Application No. 443/2010**

This the 14<sup>th</sup> day of December, 2011

**Hon'ble Sri Justice Alok Kumar Singh, Member (J)**

**Hon'ble Sri S.P.Singh, Member (A)**

Ganga Bux Singh aged about 62 years son of late Sri Kalpa Raj Singh, resident of 2/349, Vishal Khand, Gomti Nagar, Lucknow

Applicant

By Advocate: Sri Praveen Kumar

Versus

1. Union of India through the Joint Secretary, Ministry of Consumer Affairs, Food and Public Distribution, Department of Food and Public Distribution, Krishi Bhawan, New Delhi.
2. The Dy. Secretary to the Govt. of India, Ministry of Consumer Affairs, Food and Public Distribution, Department of Food and Public Distribution, Krishi Bhawan, New Delhi.
3. The Assistant Regional Director (Storage and Research), Quality Controlling Cell, Lucknow.

Respondents

By Advocate: Sri A. Pal

**ORDER (RESERVE)**

**BY HON'BLE SHRI JUSTICE ALOK KUMAR SINGH, MEMBER (J)**

This O.A. has been filed for the following reliefs:-

- a) to grant the 3<sup>rd</sup> financial up-gradation with other consequential orders and release of pay with effect from 1.9.2008 till the date of superannuation.
- b) to fix the pensionary benefits etc. and pay the arrears of pension and other benefits accrued on account of grant of grade pay Rs. 7600/- in pay band 3 as 3<sup>rd</sup> financial upgradation.
- c) to grant interest at the rate of 12% on the arrears accrued as a result of grant of relief no. A& B of the instant O.A. till the date of actual payment.
- d) Any other relief which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.
- e) cost of the present case.

2. According to applicant, he was initially appointed on the post of Plant Protection Supervisor w.e.f. 27.8.1970 in the State of U.P. Subsequently, he was appointed under the respondents on 3.8.1978 on the post of Technical

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Officer at Bhubaneswar. The DOP&T issued an O.M. dated 9.8.99 introducing financial upgradation scheme. This scheme is known as Assured Career Progressive Scheme (in short ACP scheme) (Annexure A-1). According to this scheme, the upgradation was to be done on completion of 12 years and further on completion of 24 years of service. The intention was to remove the stagnation. The respondents issued an order dated 31.3.2000 giving the first financial up-gradation in favour of the applicant in terms of the aforesaid O.M. (Annexure A-2). In due course, the applicant became due for 2<sup>nd</sup> financial up-gradation and vide order dated 30.9.2000, he was given the next upgraded higher pay scale (Annexure A-3). On 19.5.2009, the DOP&T issued another Modified Assured Career Progressive Scheme (in short MACP) after six Pay Commission report. According to this scheme, consideration of up-gradation has to be made after 10 years, 20 years and 30 years of service. The applicant was due for 3<sup>rd</sup> financial up-gradation in terms of MACP scheme. Meanwhile, he retired on 31.1.2009 itself. Therefore, he made a representation for his 3<sup>rd</sup> up-gradation on 22.10.2009. The respondents granted the benefit to the similarly situated persons, ignoring the applicant by passing an order dated 11.5.2010 (Annexure A-5). The effective date has been shown in this order as 1.9.2008 and on that date, the applicant was very much in service and had also completed 30 years of regular service. Lastly, the applicant submitted a representation dated 1.6.2010 (Annexure A-6) but no orders were passed.

3. The respondents contested the O.A. by filing a detailed C.A. saying that the applicant was considered for grant of 3<sup>rd</sup> financial up-gradation under the MACP scheme but cannot be granted due to non-fulfillment of eligibility condition as referred to in para 17 of the Annexure attached to the DOP&T O.M. dated 19.5.2009 (Annexure 1). The screening committee observed that the applicant did not have the required bench mark of having Very Good grading in his ACR of each of the five years. During these five years, he earned only one entry of 'Very Good' for the year 2002-03. For the rest four years, he earned the entry of 'Good' only. The receiving of the representations alleged by the applicant has been denied.



4. The applicant filed Rejoinder Reply saying that the respondents cannot be allowed to consider the material which are adverse especially when they have not communicated the relevant entries. He also pleaded that his case is fully covered by the case of Hon'ble Apex Court in the matter of Dev Dutt and Abhijit Ghosh etc.

5. We have heard the learned counsel for the parties and thoroughly perused the material on record.

6. At the out set, it may be mentioned that concededly, the applicant has been deprived from the benefit of 3<sup>rd</sup> financial upgradation (grade pay of Rs. 7600/- under MACP scheme) on account of non-fulfillment of eligibility condition i.e. bench mark of having 'Very Good' grading in his Annual Confidential Report of each of the five years. It is also not disputed that out of the five years, he had earned 'Very Good' entry for only one year i.e. 2002-03. For the remaining 4 years i.e. 2000-2001, 2001-2002, 2003-2004 and 2007-2008, he earned only 'Good' entry. The averment contained in para 11 of the R.A. has been uncontroverted, that the ACRs for those four years were never communicated to the applicant.

7. Now we have to see what is the legal position in this regard. The law is settled on this point that non-communication of entries in the ACR of a public servant having civil consequences is violative of Article 14 of the Constitution of India because it may affect his chances for promotion or get other benefits. This preposition of law was laid down in the case of Abhijit Ghose Dastidar Vs. UOI and others reported in 2009 Vol. 16 SCC 146. Earlier also in the case of Dev Dutt vs. Union of India and others reported in (2008) 8 SCC 735, it was laid down that all the grading whether 'very good' 'good' 'average' or 'poor' are required to be communicated to the employees on the basis of principles of natural justice and fairness. Even a good entry can be adverse in the context of eligibility for promotion.

8. The Central Administrative Tribunal, Principal Bench in the case of Sanjay Kumar , Additional Commissioner of Income Tax Vs. Union of India and others (O.A. No. 592/2009) while following the aforesaid case law of

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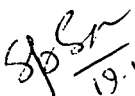
Dev Dutt (supra) even went to the extent that it would not make any sense to communicate down graded ACRs to the employee concerned and after about 6 years to seek his representation and then to take a decision by the competent authority. Similarly, in another O.A.No. 311/2010, D.K.Singh, Commisisoner of Income Tax Vs. Union of India and others also the Central Administrative Tribunal, Principal Bench reiterated the same principle. Following these decisions, the co-ordinate bench of this Tribunal also in O.A. No. 275/2008 decided on 25.8.2011 followed the view taken by the Principal Bench, CAT, New Delhi in the aforesaid two cases and opined that in the case of Sanjay Kumar (supra), there was a delay of about 6 years only whereas in the case of Sanjay Verma Vs. UOI (O.A.No. 275/2008) which was before this Tribunal, the delay was of more than 9 years. Therefore, this Tribunal reached to a conclusion that it would not make any sense to give a direction to communicate the adverse remarks of ACR to the applicant and then to decide his representation and thereafter to take appropriate decision in the matter. Finally, therefore, the impugned order dated 23.1.2008 in that case was quashed and respondents were directed to convene a review DPC expeditiously to consider the claim of the applicant for his promotion without taking into consideration the un-communicated down graded or adverse remarks for the relevant years.

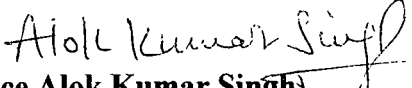
9. In the present case also, the applicant has retired in January, 2009 i.e. about two years before and the relevant entries in question pertain to the year 2000-2001, 2001-2002, 2003-2004 and 2007-2008. Therefore, it would not make any sense now to give a direction to communicate the adverse / down graded remarks to the applicant and then to decide the representation and then to take appropriate decision in the matter. Therefore, adhering to the view taken by us in the aforesaid OA No. 275/2008 and also in another OA. No. 400/2010 decided on 21.7.2011, we intend to give similar direction to the respondents in this case.

10. In view of the above, O.A. is allowed. The respondents are directed to convene a review DPC to consider the case of the applicant for granting 3<sup>rd</sup>

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financial up-gradation without taking into consideration the un-communicated down graded or adverse remarks for the relevant years. No order as to costs.

  
(S.P.Singh)  
Member (A)  
19.12.2011

  
(Justice Alok Kumar Singh)  
Member (J)  
19.12.11

HLS/-