

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 27.09.2004.

OA No. 504/2002

1. Gyarsi Lal Gupta s/o late Shri R.S.Gupta, aged about 45 years r/o V & P Jahoja, Distt. Jaipur.
2. Arjun Kumar s/o Shri Tek Chand Dua, aged about 38 years r/o 4-M-14, Jawahar Nagar, Jaipur
3. Mukesh Narain Nag s/o Shri S.N.Nag, aged about 45 years r/o 80/293 Patel Marg, Mansarovar, Jaipur

All are working as Data Entry Operation (Gr.B) in the Directorate of Census Operation, Govt. of India, 6-B, Jhalana Doongari, Jaipur.

.. Applicants

Versus

1. The Union of India through the Registrar General and Census Commissioner, 2-A, Mansingh Road, New Delhi.
2. The Director, Directorate of Census Operation, Govt. of India, 6-B, Jhalana Doongari, Jaipur.

..Respondents

Mr. Anupam Agarwal, proxy counsel to Mr. Manish Bhandari, counsel for applicants

Mr. Gaurav Jain, counsel for respondents

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

O R D E R

Per Hon'ble Mr. M.L.Chauhan.

The applicants are working as Data Entry Operators in the Directorate of Census Operation, Jaipur. Initially, the applicants and other persons filed OA No.197/2000 in this

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Tribunal. The said OA was disposed of vide order dated 7.12.2001. Pursuant to the decision rendered by this Tribunal in the said OA, the benefit under Assured Career Progression (ACP) scheme was granted w.e.f. 9.8.99 vide order dated 10.7.2002 in respect of 6 applicants but the said upgradation was granted to the present applicants w.e.f. 9.8.2000. Feeling aggrieved by this action of the respondents whereby the applicants were not granted benefit under ACP w.e.f. 9.8.99 despite the fact that they have completed required years of service of 12 years, the applicants have filed this OA thereby praying that the benefits should be granted to the applicants in terms of ACP scheme from the due date.

2. The respondents have filed reply. In the reply, it has been stated that grant of financial upgradation in terms of ACP scheme issued vide OM dated August 9, 1999 (Ann.A3) is subject to the condition annexed with this OM. Such financial upgradation has to be granted on the recommendation of the Departmental Screening Committee and the Screening Committee has to made recommendations in case the person fulfils normal promotion norms. According to the respondents, normal promotion norms prescribed for this category is that person should secure bench-mark 'Good' in order to make him eligible for grant of financial upgradation under ACP scheme. Since the applicants failed to secure the benchmark 'Good', their cases were not recommended by the Departmental Screening Committee and as such they were not eligible for grant of financial upgradation w.e.f. 9.8.99. However, the cases of these applicants were again considered by the Departmental Screening Committee for grant of benefit of ACP w.e.f. subsequent year i.e. 9.8.2000 and based on the recommendations of the Departmental Screening Committee, the applicants were granted

financial upgradation w.e.f. 9.8.2000 and arrears to the present applicants were also made on 24.7.2000. The respondents have also placed on record copy of the circular dated 16.8.2000 (Ann.R1) which clarified that for promotion to selection posts the benchmark would be 'Good' and for promotion to non-selection posts, the DPC need not make a comparative assessment of the record of officers and it should be categorised the officer as 'Fit or 'Not yet fit' for promotion. The respondents have also stated in the reply that the gradings of the applicants during the year 1994-95, 1995-96, 1996-97 were 'Average'. Thus the applicants failed to achieve 'Good' benchmark as on 9.8.99 but achieved the same on 9.8.2000, hence the benefit of ACP was awarded to them w.e.f. 9.8.2000.

3. In the rejoinder, it has been stated that action of the respondents in downgrading entry already made in the ACR as 'Good' cannot be changed to 'Average' without giving opportunity of hearing or without its communication to the concerned employee because 'Average' remarks become adverse to the employees, hence the whole action of the respondents in downgrading the ACR of the applicant is illegal. In view of the law laid down by the Apex Court in the case of UP Jal Nigam and ors. vs. Prabhat Chandra Jain and ors., 1996 SCC (L&S) 519, action of the respondents in downgrading the entry amounts to adverse entry and such an entry could not have been taken into consideration by the Departmental Screening Committee for the purpose of financial upgradation under ACP scheme.

4. The respondents have filed reply to the rejoinder in which they have categorically stated that they have neither

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down- graded the entries of the applicants nor they were bound to communicate the applicants unless and until it is adverse. Only adverse entries are to be communicated and 'Average' ACR cannot be said to be adverse. In the present case, 'average' grading in respect of the applicants have been awarded for 3 years as on 9.8.99 (for the period of 1994-95, 1995-96 and 1996-97.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

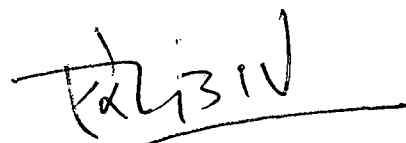
5.1 The only argument which has been advance by the learned counsel for the applicants is that the 'average' entry recorded by the respondents in the ACR for the year 1994-95, 1995-96, 1996-97 amounts to adverse entries as in the present case the benchmark is 'Good', as such the respondents were bound to communicate the same in terms of law laid down by the Apex Court in the case of UP Jal Nigam (supra), whereby it has been held that even a positive confidential entry in a given case can perilously be adverse. We have considered the submissions made by the learned counsel for the applicants. For the reasons stated hereinunder, the applicants are not entitled to any relief.

5.2 At the outset, it may be stated that decision of the Hon'ble Apex Court in the case of UP Jal Nigam (supra) is not applicable in the facts and circumstances of this case. That was a case where there were extreme variation in gradation inasmuch as 'Outstanding' gradation in one year was followed by 'Satisfactory' gradation in succeeding year. It was in that context that the Apex Court held that certain extreme variation will amount to adverse entry, but at the same time the Apex Court has also observed that where the graded entry is going a step down, like falling from 'Very Good' to 'Good'

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that may not ordinarily be an adverse entry since both are positive gradings. All that is required by the authority recording confidential in the situation is to record reasons for such downgrading on the personal file of the officer concerned, and inform him of the change in the form of an advice. Such is not a case here. From the material placed on record, it is clear that the applicants were consistently graded as 'Average' during the year 1994-95, 1995-96 and 1996-97 and the respondents in the reply to rejoinder have categorically stated that they have not down graded the ACRs of the applicants.

6. In view of what has been stated above, we see no infirmity in case the Departmental Screening Committee has not recommended the case of the applicants for grant of financial upgradation under ACP scheme w.e.f. 9.8.99 by taking into consideration the ACRs of 5 last years. However, the applicants were given financial upgradation immediately thereafter w.e.f. 9.8.2000 when they secured benchmark as 'Good' and their cases were recommended by the Departmental Screening Committee. This is the only point which was argued by the learned counsel for the applicants and no other point was pressed. In view of what has been stated above, the applicants are not entitled to any relief. Accordingly the OA is bereft of merit and the same is dismissed with no order as to costs.



(A.K. BHANDARI)

Member (A)



(M.L. CHAUHAN)

Member (J)