

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 6th day of August, 2008

ORIGINAL APPLICATION NO.243/2006

CORAM :

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.B.L.KHATRI, ADMINISITRATIVE MEMBER

Suraj Mal Tak,
Senior Compiler,
Directorate of Census Operation,
Rajasthan,
Jaipur.

... Applicant

(By Advocate : Shri N.C.Goyal)

Versus

1. Union of India through
Registrar General of India,
Ministry of Home Affairs,
2/A, Man Singh Road,
New Delhi.
2. Director,
Directorate of Census operation,
Rajasthan,
Jaipur.
3. Joint Director,
Directorate of Census operation,
Rajasthan,
Jaipur.
4. Shri K.S.Bhatnagar,
Deputy Director
(Holding the charge of Joint Director) &
Head of Office,
O/o Directorate of Census operation,
Rajasthan,
Jaipur.

... Respondents

(By Advocate : Shri V.S.Gurjar)

ORDER (ORAL)

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PER HON'BLE MR.B.L.KHATRI

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985, against the order F.No.A-32011/02/2005-Ad.IV dated 11.7.2005 (Ann.A/1), wherein his name was not considered for 2nd financial upgradation under the ACP Scheme. Through this OA, the applicant has prayed for the following relief :

- "(I) To set aside and quash the order dated 11.7.2005 qua the applicant.
- (II) The Hon'ble Tribunal be further pleased to direct the respondents to give the 2nd financial upgradation in the pay scales under the ACP after completion of 24 years of regular service with effect from 25.6.2005.
- (III) Interest on the amount of arrear due with effect from 25.6.2005 be also paid. This interest be recovered from the Respondent No.4.
- (IV) Any other order/direction which is in favour of the applicant be also passed."

2. The facts in brief are that the applicant was appointed as Compiler on 25.6.81 in the office of Directorate of Census Operation, Rajasthan, Jaipur. The applicant was granted 1st financial upgradation under the ACP after completion of 12 years of regular service on 24.6.2001. The applicant has not been promoted to the higher post since his appointment. He has completed 24 years of regular service on 24.6.2005. The 2nd financial upgradation under the ACP on completion of 24 years of regular service is due from 25.6.2005. Respondent No.1 has issued an order dated 11.7.2005 (Ann.A/1), whereby the employees working in the Directorate of Census Operation, Rajasthan, Jaipur, on regular basis, have been granted 2nd financial upgradation under ACP after completion of 24 years of regular service, whereas the applicant has not been given such benefit for the reason that applicant's performance do not meet the benchmark for grant of ACP benefit. The applicant submitted a representation to respondent No.1 against

the said order dated 11.7.2005 (Ann.A/1). In the said representation it was submitted that applicant's ACRs are neither 'below average' nor adverse and the same had never been communicated. Thereafter, the applicant submitted several representations to various authorities on the point that average remark in the ACR requires to be communicated to the employee concerned even though it may not be taken as adverse remark. Besides, there are no adverse remarks in the character rolls of the applicant for the last three years and no disciplinary proceedings are pending against him. As such, the ACRs for which the applicant was not considered fit for financial upgradation under ACP Scheme, should have been communicated to him by the respondents.

3. The respondents in their reply have submitted that after completion of 24 years of service case of the applicant for grant of 2nd financial upgradation under ACP Scheme was forwarded to the Registrar General of India, New Delhi, who informed vide letter dated 11.7.2005 that case of the applicant will be considered at appropriate time since his performance did not meet the benchmark required for grant of 2nd financial upgradation under ACP Scheme. In the reply, it was further submitted that paragraph 3.1 of the DOPT OM No.35034/1/97-Estt (D) dated 9.8.99 specifically provides that grant of financial upgradation under ACP scheme shall be subject to the conditions mentioned in Annexure-1. It was further submitted that paragraph 6.1 of the said OM specifically provides that a Departmental Screening Committee shall be constituted for the purpose of processing the cases for grant of benefits under ACP Scheme. Further, paragraph 6 of Annexure-1 of the said OM stipulates that fulfillment of normal promotion norms shall be ensured for grant of benefit under the ACP Scheme. From the facts stated it is clear that the benefit of ACP Scheme can be given to an employee only on recommendations of the Departmental Screening Committee, if he satisfies the

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normal promotional norms. The applicant did not achieve the required benchmark and thus he could not be granted 2nd financial upgradation under the ACP Scheme. Therefore, the benefit of 2nd financial upgradation Scheme was rightly denied to the applicant.

4. We have heard the rival submissions and perused the documents on record. We find that in this case the applicant has not been considered for 2nd financial upgradation on completion of 24 years of regular service on 24.6.2005. The benefit of 2nd financial upgradation was granted to the employees mentioned in the order dated 11.7.2005 (Ann.A/1) but case of the applicant was not considered for the reason that his performance did not meet the benchmark.

5. In this case, it is pertinent to rely on a decision of the Apex Court in the case of Dev Dutt v. Union of India & Ors, reported at JT 2008 (7) SC 463. In that case, the DPC held its meeting on 16.12.94. In the meeting the appellant, Dev Dutt, was not held to be eligible for promotion but his juniors were selected and promoted to the rank of Superintending Engineer as he has not secured the prescribed benchmark which was 'very good'. In that case, grievance of the appellant was that he was not communicated the 'good' entry for the year 1993-94 and had he been communicated that entry, he would have had an opportunity of making a representation for upgrading that entry from 'good' to 'very good', and if that representation was allowed he would have also become eligible for promotion. Therefore, he submitted that, rules of natural justice have been violated. It is considered pertinent to quote para-39, 40 & 45 of the said judgement of the Apex Court, as under :

"39. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very

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good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.

40. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as 'it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.

45. In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution."


6. It is also pertinent to rely upon a decision of the Full Bench of this Tribunal in the case of Ashok Kumar Aneja v. Union of India & Ors, decided on 7.5.2008 by the Principal Bench, wherein the Full Bench held that all entries in the ACRs below the benchmark are to be communicated and all entries downgraded from 'very good' to 'good' are also to be communicated to the employee/officer concerned.


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7. In our opinion, our natural sense of what is right and wrong tells us that it was wrong on the part of the respondents not to communicate the entries in the ACR which were below the benchmark since the applicant was thereby deprived of the right to make a representation against it which, if allowed, would have entitled him to be considered for allowing the benefit of 2nd financial upgradation. One may not have the right to promotion but one has the right to be considered for promotion, and this right of the applicant was violated in the present case.

8. Thus, in view of the law laid down by the Apex Court as also by the Full Bench, the respondents are directed to communicate all the entries below the benchmark to the applicant within a period of two months from the date of receipt of a copy of this order so that he may file representation against such entries and on receipt of the representation the respondents are directed to decide the representation by passing a reasoned and speaking order, as held in the judgements cited supra. Representation must be decided by the authority higher than the one who gave the entry below the benchmark. Therefore, the applicant is directed to file his representation to the authority higher than the one who gave him such entry within one month from the date of communication of such entries received from the respondents and the respondents are directed to decide the representation within a period of three months from the date of receipt thereof. In case the representation of the applicant is decided against him, he would be at liberty to approach this Tribunal again, if he so chooses.

9. With these observations, the OA stands disposed of. No order as to costs.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)