

**ORDERS OF THE BENCH**

**Date of Order: 01.11.2012**

OA No. 260/2009

Mr. N.C. Goyal, counsel for applicant.

Mr. Gaurav Jain, counsel for respondents.

At the request of learned counsel for the respondents, put up the matter on 27.11.2012. The learned counsel appearing for the respondents undertakes to produce the concerned service record of the applicant on the next date. Put up the matter on 27.11.2012 for hearing.

*Anil Kumar*

(ANIL KUMAR)  
MEMBER (A)

*K.S. Rathore*

(JUSTICE K.S. RATHORE)  
MEMBER (J)

Kumawat

27/11/2012

Case adjourned on the request of  
learned counsel for applicant (s) /  
respondent (s). Put up for hearing

27/11/2012

*Arjit (H) M*  
Court Officer

11-12-2012

Mr. N.C. Goyal - Counsel for applicant  
Mr. Gaurav Jain - Counsel for respondents

Heard the learned counsel for the parties

The OA has been disposed of by a separate  
order for the reasons dictated therein.

*Anil Kumar*  
(Anil Kumar)  
Member (A)

*K.S. Rathore*  
(Justice K.S. Rathore)  
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 260/2009

**DATE OF ORDER:** 11.12.2012

**CORAM**

**HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER**  
**HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

Suraj Mal Tak S/o Shri Mohan Lal Tak, aged about 53 years, Sr. Compiler, Directorate of Census Operation, Rajasthan, Jaipur, R/o Lal Kothi, Sabji Mandi, Tonk Road, Jaipur.

...Applicant

Mr. N.C. Goyal, counsel for applicant.

**VERSUS**

1. Union of India through the Registrar General of India, Government of India, Ministry of Home Affairs, 2/A, Mansingh Road, New Delhi.
2. The Director, Directorate of Census Operation, Rajasthan, Jaipur.
3. The Joint Director, Directorate of Census Operation, Rajasthan, Jaipur.

...Respondents

Mr. Gaurav Jain, counsel for respondents.

**ORDER (ORAL)**

This is the second round of litigation. Earlier, the applicant had filed O.A. No. 243/2006 before this Bench of the Tribunal.

In earlier O.A., the applicant had sought the following reliefs: -

- "(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 2<sup>nd</sup> financial up-gradation in the pay scales under the ACP after completion of 24 years of regular service with effect from 25.6.2005.

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- (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."

This O.A. was decided by this Bench of the Tribunal vide its order dated 6<sup>th</sup> August, 2008, and in para 8 of the order, the Tribunal observed as under: -

"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 judgments 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."

In compliance of these directions, the respondents decided the representation of the applicant vide order dated 18.03.2009 (Annexure A/1). The competent authority considered the representation of the applicant and did not find any merit in his representation; therefore, the representation given by the applicant was rejected. Aggrieved by this decision of the respondents, the applicant has filed this O.A. praying for the following reliefs:

"(i) to issue order, directions or writ in the nature of mandamus to the respondents to direct them to grant

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the second financial upgradation in the pay scale under the ACP Scheme after completion of 24 years of regular service w.e.f. 25.6.2005.

(ii) to set aside the order dated 18.3.09 (Annexure-1) issued by the competent authority on the representation of the applicant.

(iii) to set aside and quash the order dated 11.7.05 qua the applicant.

(iv) to issue directions to the respondents to pay interest on the amount of the arrear due w.e.f. 25.6.2005.

(v) to pass any other order or directions which is in favour of the applicant."

2. Learned counsel for the applicant argued that the order dated 18.03.2009 (Annexure A/1) passed by the Under Secretary, Office of the Registrar General, India, New Delhi is against the provisions of law and the instructions on the subject and also violative of Article 14, 16 and 21 of the Constitution of India.

3. Learned counsel for the applicant further argued that bare perusal of the entries in the ACRs right from 1999 to 2003 would reveal that none of these entries of the applicant are below average or adverse. The entries below benchmark is not adverse entry, even then when it is considered for granting the benefit of ACP or promotion, then required to be communicated to the concerned official/officer at the relevant time, so that he may improve his working or performance.

4. Learned counsel for the applicant further argued that the memo dated 22.09.1999 and office memo dated 08.12.2008

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have never been entered in the ACRs. Further, these memorandums are merely informative in nature, which have been replied by the applicant in time. These memorandums after getting reply from the applicant had duly been filed by the Director, Census Operation, Rajasthan, Jaipur. So nothing is adverse against the applicant.

5. Learned counsel for the applicant further submitted that the ACRs of the applicant are average, and average ACR cannot be considered to be an adverse ACR or below the average ACR. The ACR of the applicant in any way cannot be considered below the benchmark. Therefore, the action of the respondents in not granting the 2<sup>nd</sup> financial upgradation under the ACP scheme to the applicant is arbitrary action of the respondents. Therefore, the respondents be directed to grant the 2<sup>nd</sup> financial upgradation under the ACP scheme to the applicant with effect from 25.06.2005 on completion of 24 years of regular service.

6. On the other hand, learned counsel for the respondents argued that after completion of 24 years of service, the case of the applicant for grant of 2<sup>nd</sup> financial upgradation under the ACP scheme was considered by the competent authority. The office of the Registrar General, India, New Delhi vide its letter No. 32011/2/2005-Ad. IV dated 11.07.2005 informed that the case of Shri Suraj Mal Tak will be considered at the appropriate time since his performance did not meet the benchmark required for grant of 2<sup>nd</sup> financial upgradation under the ACP Scheme.

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7. Learned counsel for the respondents further argued that in compliance of the order passed by this Bench of the Tribunal in OA No. 243/2006, the respondents have communicated all entries below benchmark to the applicant vide office letter No. 390 dated 07.11.2008. On receipt of the said letter, the applicant submitted a representation on 19.12.2008. The representation of the applicant was examined by the competent authority and after careful examination, the same was rejected vide order No. 13014/42/2006-Ad. IV/1405 dated 18.03.2009 (Annexure A/1).

8. Learned counsel for the respondents further argued that the grant of financial upgradation under ACP Scheme is subject to the condition that fulfillment of normal promotion norms shall be ensured for grant of the benefit of ACP under ACP Scheme. Therefore, the applicant had to satisfy the criteria of normal promotional norms. Since the applicant failed to achieve the required benchmark, hence, he was denied the benefit of 2<sup>nd</sup> financial upgradation under ACP Scheme. He further argued that the ACRs of the applicant for the years 1999-2000, 2000-2001, 2001-2002 and 2003-2004 have been scrutinized and it has been found that the applicant has been graded as 'average' by five Reporting/Reviewing Officers during the aforesaid period. Therefore, there is no scope left to believe that they were all subjective in recording his ACRs. They were actually based on his performance during the said period.

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9. Learned counsel for the respondents further argued that the respondents were not bound to communicate the applicant his average or good ACRs. Only the adverse entries were required to be communicated to an official and average ACR cannot be said to be adverse. He further argued that the judgment of the Hon'ble Supreme Court in the case of Dev Dutt vs. Union of India & Ors. (JT 2008 (7) SC 463) was delivered in the year 2008 whereas ACRs of the applicant in question pertain for the period from 1999-2000, 2000-2001, 2001-2002 and 2003-2004 and during which time the action taken by the respondents was as per the extant instructions of the DoPT.

10. Learned counsel for the respondents further submitted that the case of the applicant for financial upgradation under MACP has been duly forwarded to the competent authority for his consideration. Learned counsel for the respondents also produced the original ACRs of the applicant for perusal of this Bench of the Tribunal in compliance of the order dated 01.11.2012. Learned counsel for the respondents submitted that even perusal of the original ACRs would reveal that the applicant has earned 'average' in his ACRs for the period from 1999-2000, 2000-2001, 2001-2002 and 2003-2004 and, therefore, he was graded as below benchmark and could not be granted 2<sup>nd</sup> financial upgradation under the ACP Scheme. Learned counsel for the respondents submitted that the action of the answering respondents is according to the provisions of law and instructions issued on the subject from time to time;

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therefore, the O.A. has no merit and prayed that it should be dismissed with costs.

11. Heard the rival submissions of the respective parties, perused the relevant documents available on record and also original ACRs of the applicant, which was produced by the learned counsel for the respondents during the course of the arguments. It is not disputed that in the earlier O.A. No. 243/2006 filed by the applicant, this Bench of the Tribunal directed the respondents to communicate all the entries below the benchmark to the applicant. In compliance of this order, the respondents have supplied the copies of all the entries made in ACRs below the benchmark to the applicant. The applicant submitted a representation to the respondents. The respondents considered the representation of the applicant and rejected the same vide order dated 18.03.2009 (Annexure A/1). We have seen the original record of the ACRs of the applicant for the year from 1999-2000 to 2003-2004. For the year 1999-2000, the applicant has been graded as 'average' by the Reporting Officer as well as by the Reviewing Officer. For the year 2000-2001, he has been graded as 'good' by the Reporting Officer but the Reviewing Officer graded him as 'average' in place of 'good'. For the year 2001-2002 (period from 01.04.2001 to 08.10.2001), his performance has been graded as 'average' by the Reporting Officer as well as by the Reviewing Officer. For the period from 08.10.2001 to 31.03.2002, the applicant has been graded as 'good' by the Reporting Officer as well as by the Reviewing Officer. For the year 2002-2003, his ACR has been

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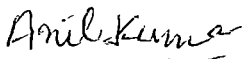
graded as 'good' by the Reporting Officer but the Reviewing Officer has graded him as 'satisfactory' for the same period. For the year 2003-2004, the Reporting Officer has graded the applicant as 'good' but the Reviewing Officer has graded him as 'average'. It is also seen that all these entries in the ACRs have been given by the different officers at the different point of time, therefore, it cannot be said that these ACRs are based on the subjective assessment of the concerned officers.


12. It is clear from the perusal of the record that the applicant was not granted 2<sup>nd</sup> financial upgradation under the ACP Scheme because his ACRs for the period from 1999-2000 to 2003-2004 were below benchmark. Copies of these ACRs have also been communicated to the applicant and the existence of these ACRs on record is not disputed by the learned counsel for the applicant. Therefore, in our opinion, the action of the respondents in not granting the 2<sup>nd</sup> financial upgradation under the ACP Scheme to the applicant after completion of 24 years of regular service with effect from 25.06.2005 is according to the provisions of ACP Scheme, as his ACRs were below benchmark. The applicant is at liberty to make a representation to the competent authority for the upgradation of his ACRs upto the level of the benchmark, if he so advised. If the applicant submits such representation to the competent authority, it is for the competent authority to decide the same in accordance with the provision of law and instructions issued on the subject from time to time.

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13. We have also carefully gone through the order dated 18.03.2009 (Annexure A/1), vide which the representation of the applicant has been rejected by the competent authority and we find that this order is a speaking and reasoned order. We find no infirmity or illegality in this order. Thus, the Original Application has no merit.

14. Consequently, the Original Application is dismissed being devoid of merit with no order as to costs.

  
(ANIL KUMAR)  
MEMBER (A)

  
(JUSTICE K.S. RATHORE)  
MEMBER (J)

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