

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 30.10.2015

OA No. 207/2012 with MA No.291/00138/2014)

Mr. Sanjeev Prakash Sharma, Senior counsel along with
Mr. Sandeep Singh, Counsel for the applicant.

Mr. Rajendra Vaish, Counsel for respondents No.1.

Mr. V.D.Sharma, Counsel for respondent No.2.

Heard the Ld. Counsels for parties.

The OA is disposed of by a separate order on
separate sheets for the reasons recorded therein.

(MS.MEENAKSHI HOOJA) (JUSTICE HARUN-UL-RASHID)
Member (A) Member (J)

Adm/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

Jaipur, the 30th day of October, 2015

ORIGINAL APPLICATION No. 291/00207/2012

With

Misc. Application No.291/00138/2014

CORAM :

HON'BLE MR. JUSTICE HARUN-UL-RASHID, JUDICIAL MEMBER

HON'BLE MS. MEENAKSHI HOOJA, ADMINISITRATIVE MEMBER

Ms. Neelima Jauhari D/o Shri Prakash Chand Jauhari, aged around 54 years, R/o F-24, Gautam Marg, Vaishali Nagar, Jaipur, presently working as Principal Secretary, State of Rajasthan, Jaipur

... Applicant

(By Advocate: Mr. Sanjeev Prakash Sharma, Sr. Adv. with Mr. Sandeep Singh)

Versus

1. Union of India represented through Secretary to Ministry of Department of Personnel and Training, Government of India, New Delhi.
2. State of Rajasthan represented through Principal Secretary, Department of Personnel, Government of Rajasthan, Government Secretariat, Jaipur

... Respondents

(By Advocate: Mr. Rajendra Vaish for resp. No.1

Mr. V.D.Sharma, for resp. No.2

ORDER (ORAL)

Per Hon'ble Ms. Meenakshi Hooja, Member (A)

This OA has been filed on 30.03.2012 u/s 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- (i) The order dated 19.3.2012 passed by the Department of Personal (A-1), Government of Rajasthan may kindly be quashed and set aside.
- (ii) The respondents may be directed to produce the entire service record including the APAR of the applicant from the year 1998-99 onwards. On the basis of service record, pleading and submissions, gradation in the APAR of the year 1999-2000 may be directed to be rated as "outstanding". The APARs of the year 2000-01, 2001-02 and 2002-03 may be upgraded and the respondents may be directed to ignore the downgrading remarks of APAR year 1999-2000 or in alternative same may be upgraded to the gradation of previous year.
- (iii) The Benchmarks awarded to the applicant may be upgraded to 8 or 9 in the category of outstanding as per complete record of particular year and to match with previous and subsequent APARs.
- (iv) The respondents may be directed to consider the case of the petitioner for empanelment as Additional Secretary in the Central Government on central deputation on the basis of her overall service record ignoring the downgraded remarks.
- (v) Any other order or direction which this Hon'ble Tribunal deems proper in the facts and circumstances of the case, may also be passed in favour of the applicant.

2. The matter came up for our consideration today and at the outset during the course of arguments, the learned counsel for the applicant, Shri Sanjeev Prakash Sharma submitted that this OA was filed in the year 2012 and at that time the applicant was eligible to be considered as Additional Secretary to the Government of India in the Central Government, but now with the passage of more than 3 years, she is presently working as Chairman, Board of Revenue, Rajasthan and eligible to be considered as Secretary to the Government of India and, therefore, her payee may be considered accordingly. In this connection he submitted that an MA was also filed by the applicant which has been registered as MA No.138/2014 and listed today for passing of orders.

3. On the basis of the points raised in the OA, the learned counsel for the applicant submitted a summarised chart of the position of the ACRs of the applicant (taken on record for reference) and contended that the applicant who belongs to the 1979 batch of the Indian Administrative Service (IAS) of Rajasthan cadre has 'very good', 'outstanding' ACRs in the year 1998-99 but in the year 1999-2000, adverse remarks were given which were later expunged, but the entry that was recorded after expunction was 'average' and no proper notice or information was given as to why after expunction of adverse remarks, the entry of 'average' was given. Further, in the year 2000-2001 for the period 01.04.2000 to 18.10.2000, the accepting authority

has given 'very good' and, therefore, the entire APAR for that year is required to be treated as 'very good'. He further submitted that the applicant has 'very good' ACRs from the year 2003-04 to 2006-07 and APARs in the scale of 8 and above up to the year 2012-13 and even in the year 2013-14, a grading of '9' has been given. However, for the period 19.10.2000 – 31.03.2001 in the year 2000-01, 2001-02 and 2002-03 grading of 'good' has been given which is not at all in consonance with the overall record of the applicant nor in accordance with the performance of her duties. He submitted that as far as Ann.A/1 i.e. order of DOP (A-1), Government of Rajasthan dated 19th March, 2012 is concerned (which has been passed on the representation of the applicant dated 22.11.2011 filed in pursuance of the order of this Tribunal dated 31.10.2011 in an OA filed earlier by the applicant), these gradings are not being changed simply on the ground that the Reporting, Reviewing and Accepting Authorities have retired/demitted the office. Counsel for the applicant contended that this cannot be a justification at all for not considering her representation. He contended that in view of the improper gradation and downgradation of the APARs, the applicant could not be empanelled for appointment to the post of Additional Secretary in the Central Government. Counsel for the applicant also submitted that the 'good' ACRs for the period 2000-01, 2001-02 and 2002-03 were never communicated to the applicant and when the applicant was not

empanelled in Central Government as Additional Secretary, the applicant made an application under RTI to supply the copies of ACRs for the year 1997-98 onwards, and though not supplied, she was shown her ACRs from 1997-98 to 2009-10 in September, 2011 and she came to know of her downgradation specially in the year 2000-01, 2001-02 and 2002-03, a downgradation from her previous record. It was submitted that the 'good' entry though may be not adverse is of no satisfaction to the incumbent if it in fact makes him/her ineligible for promotion and has an adverse effect or chances especially in selection to posts which have a pyramidal structure and selection is based on merit with due regard to seniority and ACRs/APARs are crucial in the process of selection.'

4. In support of his contention, the learned counsel for the applicant relied on the following judgments of the Hon'ble Apex Court:-

- i. Sukhdev Singh vs. Union of India and others, reported in [(2013) 9 SCC 566],
- ii. Abhijit Ghosh Dastidar vs. Union of India and others, reported in [(2009) 16 SCC 146]
- iii. Dev Dutt vs. Union of India and others, reported in [(2008) 8 SCC 725]

The counsel for the applicant referred the law laid down in the case of Abhijit Ghosh vs. UOI and ors. (supra) where it has been held that the entry of 'good' should have been communicated to him as he was having 'very good' in the

previous year. In those circumstances, in our opinion, non-communication of entry in the ACR of a public servant whether he is civil, judicial, police or any other services (other than armed forces) it has civil consequences because it may affect his chances of promotion or getting other benefits. Further earlier in the case of Dev Dutt vs. UOI (supra), it has been held that the principle of natural justice applies in the case of ACR, and the entry in the ACRs should be communicated to the employee and communication of entries and giving opportunity to represent against them is particularly important on higher posts which are in a pyramidal structure when often principle of elimination is followed in selection for promotion, and even a single entry can destroy career of an officer, which has otherwise been outstanding throughout.

5. The learned counsel for the applicant thus prayed that in view of the aforesaid rulings, the gradation in the APAR for the year 1999-2000 requires to be rated as 'outstanding' and the APARs of the year 2000-01, 2001-02 and 2002-03 may be upgraded and the respondents may be directed to ignore the downgrading remarks of the APAR of the year 1999-2000 and in the alternative, the same may be upgraded to the gradation of previous year and An.A/1 may be set-aside. Further, in view of the applicant's present eligibility for Secretary in the Central Government, respondents may be directed to consider the case of the applicant for empanelment now as Secretary in the Central

Government under the Central Staffing Scheme on the basis of her overall meritorious service record ignoring the downgraded remarks.

6. Per contra, Ld. counsel for respondent No.1, Union of India, Shri Rajendra Vaish reiterated the points raised in their reply and submitted that appointment to the posts of Joint Secretary/Additional Secretary/Secretary in the Government of India is made on deputation and regulated by the provisions of the Central Staffing Scheme and such appointments to the positions are preceded by their 'empanelment' at respective levels in the Central Government as per Empanelment Guidelines in the matter. The empanelment process is carried out by a Special Committee of Secretaries (SCoS) which takes into account the experience profile of the officers concerned, scrutinizes their records and evaluates qualities such as general reputation, merit, competence, leadership, flair for participation in policy making and in their implementation, while recommending names of the officers to be included in the panel. Prior to that, an Expert Panel initially examines the ACRs of the officer in detail for each batch and gives its own assessment of the gradings of the officer, which are taken into account by the SCoS, while recommending the list of officers to be included in the panel. It has also been averred that such empanelment and appointment in the Central Government are not avenues of promotion or career progression for the officers belonging to IAS

or other service and that empanelment is not to be considered as reflection of intrinsic merit but the suitability of the office to occupy the senior level posts in the Central Government. Further, empanelment of the officers to these posts is through process of strict selection and the needs of the Central Government are of paramount importance.

It was further submitted that the case of the applicant for empanelment for the post was duly considered by the Special Committee of Secretaries in its meeting held on 28.04.2009, 01.05.2009 and 13.05.2009 which has considered the report submitted by the Expert Panel regarding the officers of 1979 batch of IAS in connection with their empanelment at the Secretary/Additional Secretary level, but she was not found fit to be recommended for empanelment for appointment to the post of Additional Secretary/equivalent posts in the Centre, even after first and second review carried out to consider left out officers of the 1979 batch. It has also been submitted that so far as the issue of upgradation of ACR/APARs of the applicant, it is related to the respondent No.2 i.e. the Government of Rajasthan represented through the Principal Secretary, Department of Personnel, Government of Rajasthan. As the applicant has been considered for empanelment as per the laid down procedure and not found fit for being recommended, therefore, he prayed for dismissal of the OA.

7. Counsel for respondents No.2 i.e. State Government, with reference to the reply, submitted that in the first place, the OA is barred by limitation because the applicant has come after a lapse of more than ten years regarding the ACRs pertaining to the year 1999-2000, 2000-01, 2001-02 and 2002-03, therefore, the case is barred by limitation. It has been further submitted that the single OA has been filed for separate causes of actions and on that ground also, the OA is not maintainable and is liable to be dismissed. He further submitted that in pursuance to the direction of the Tribunal dated 31.10.2011, in an earlier OA filed by the applicant, representation of the applicant was considered and vide order dated 19th March, 2012 (Ann.A/1), the applicant has been informed that the adverse entries in the ACR pertaining to the year 1999-2000 have already been expunged and it has been further stated that the then competent authorities had decided to keep the grading of the above ACR unchanged and since the then Reporting, Reviewing and Accepting Authorities have retired/demitted office, the request for upgrading the above ACRs cannot be acceded to. He further submitted that the grading in the ACRs have been given in accordance with the rules on the subject and no case is made out for upgradation in the other ACRs and the adverse recording was duly communicated and later expunged for the ACR 1999-2000 and prayed for dismissal of the OA.

8. Considered the aforesaid contentions and perused the record. The contention of the applicant regarding delay and non-maintainability of the OA regarding separate causes of action does not carry conviction because representation dated 22.11.2012 was filed by the applicant in pursuance to the order of this Tribunal dated 31.10.2011 and the same has been decided vide order dated 19th March, 2012 (Ann.A/1) and this OA has been filed on 30.3.2012 challenging the aforesaid order. Further the cause of action relates to upgradation and downgradation of ACRs with reference to empanelment as Additional Secretary/Secretary in the Central Government and entry in ACRs pertaining to different years cannot be said to be as separate causes of action.

On a detailed perusal of the pleadings, and the chart submitted by the counsel for the applicant during the course of hearing, it is seen that adverse remarks for the year 1999-2000 of the applicant were expunged and after expunction of adverse remarks grading of 'average' was given. The respondent No.2 in the reply have not given any proper/specific explanation as to why after expunction of adverse remarks, the grading 'average' was given or whether any opportunity was given to the applicant to represent against the 'average' grading. Further, it is seen that the ACRs pertaining to the year 2000-01 for the period 01.04.2000 to 18.10.2000 has been upgraded by the accepting authority as 'very good' though only 'average' grading has been

given by the Reporting Authority. As far as the ACRs for the part remaining year 2000-01 (19.10.2000 to 31.03.2001), 2001-02 and 2002-03, the applicant has been assessed as 'good'. As per Rule 8 of the AIS (Confidential Rolls) Rules, 1970 (which were in force upto March 2007 when they were replaced by All India Service (Performance Appraisal Regulations) Rules, 2007) adverse remarks are required to be communicated to the officer. The applicant has contended that as the appointment to the post of Additional Secretary/Secretary in the Central Government are made on selection basis, any entry 'average' or 'good' not communicated, has an adverse impact on the selection of the officer, as they get a lesser grading. In this regard, we note that in Dev Dutta vs. UOI and others [(2008) 8 SCC 725], referred to by the counsel for the applicant the issue regarding CRs and their communication has been adjudicated upon by the Hon'ble Apex Court and inter-alia following principles have been laid down:-

It is thus the rigours of the entry which is important, not the phraseology. Grant of a "good" entry is of no satisfaction to an incumbent if it in fact makes him ineligible for promotion or has an adverse effect on his chances.

Even if there is no benchmark, non-communication of an entry may adversely affect the employee's chances of promotion (or getting some other benefit), because when comparative merit is being considered for promotion (or some other benefit) a person having a "good" or "average" or "fair" entry certainly has less chances of being selected than a person having a "very good" or "outstanding" entry.

Communication of entries and giving opportunity of represent against them is particularly important on higher posts which are in a pyramidal structure where often principle of elimination is followed in selection for promotion, and even a single entry can destroy career of an officer which has otherwise been outstanding throughout.

This principle has been upheld in the case of *Abhijit Ghosh vs. UOI and others* [(2009) 16 SCC 146] wherein it has been stated that :-

"Therefore, the entries "good" if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him."

9. We also notice that the grading of the applicant for the year 1998-99 (in all the 3 ACRs written for different periods in the financial year) was 'very good'/ 'outstanding' and thereafter from the year 2003-04 upto 2012-13 entries have been 'very good'/ 'outstanding' and later ranging between grade of '8' and '9'. As brought out by respondent No.1 in their reply that the process of selection to the post of Additional Secretary/Secretary in the Central Government under the Central Staffing Scheme is done as per the laid down procedure wherein the Special Committee of Secretaries takes into account the experience profile of the officer concerned, scrutinise their record and evaluates qualities such as general reputation, merit,

competence, leadership, flair of participation in policy marking and in their implementation while recommending names of the officers to be included in the panel. Prior to that, an Expert Panel initially examines the ACRs of the officers in detail for each batch and gives its own assessment of the gradings of the officer, which are taken into account by the SCoS while recommending the list of officers to be included in the panel. It is evident from the above, that the ACRs/APARs of an officer are crucial and important for empanelment and selection to the post of Additional Secretary/Secretary. Thus, fair grading of the officer plays a vital and crucial role for empanelment and selection for these posts in the Central Government under the Central Staffing Scheme. Though it has been averred in the reply filed by the respondent No.1 that selection to the post of Additional Secretary/Secretary is not promotion but a selection keeping in view the needs of the Central Government, yet it cannot be denied that the selection to these posts or non-selection is bound to have an impact on the career chances of the officer and the opportunity to work in the Central Government at higher posts of Additional Secretary/Secretary.

10. In view of above position, we are of the view that for the purposes of consideration of the applicant, who is now working as Chairman, Board of Revenue, Rajasthan, if otherwise eligible, for empanelment/selection as Secretary to the Government of India in the Central Government under the Central Staffing

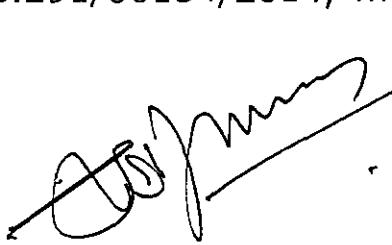
Scheme, the gradings in the following ACRs are required to be treated as under:-

1999-2000	After expunction of adverse remarks, the grading of 'Average' has no basis and therefore, needs to be ignored.
2000-2001 (01.04.2000 to 18.10.2000)	It shall be rated as 'very good' in view of the assessment made by the Accepting Authority.
2000-2001 (19.10.2000 to 31.03.2001), 2001-2002, 2002-2003 (01.04.2002 to 15.12.2002)	The entries 'good' since not communicated and representation not considered later as per Ann.A/1 shall be ignored or not treated below the benchmark, if any. We are placing reliance on the judgment of the Hon'ble Apex Court in Dev Dutt vs. UOI and Abijit Ghosh vs. UOI (supra)

11. The OA is, thus, disposed of with directions to respondent No.1 i.e. Union of India through the Secretary, Department of Personnel and Training, Government of India to consider the applicant, if otherwise eligible, for empanelment/selection as Secretary in the Central Government under the Central Staffing Scheme with the gradings of ACRs as stated in the preceding paragraph. Further, the applicant's case shall be considered in the next meeting of the Special Committee of Secretaries (SCoS). The respondent No.2 the State of Rajasthan through Principal Secretary, Department of Personnel, Government of Rajasthan, Jaipur shall also carry out any required formalities without delay for consideration of the case of the applicant by respondent No.1 as directed above. No order as to costs.

In view of the above order passed in the OA, no separate order is required to be passed in MA No.291/00134/2014, which also stands disposed of.


(MEENAKSHI HOOJA)
Administrative Member


(JUSTICE HARUN-UL-RASHID)
Judicial Member

R/