

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 35/2012

ORDER RESERVED ON 09.02.2015

DATE OF ORDER : 13.2.2015

CORAM :

**HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE SMT. CHAMELI MAJUMDAR, JUDICIAL MEMBER**

Diwakar Sharma son of Shri Radhey Shyam Sharma, by caste Sharma, aged about 57 years, resident of House No. 1762, Diwan Bhag Chand Ki Gali, Sonthiwalon Ka Rasta, Jaipur-3. Presently working as HPMO in the office of Director Census Operation-6B, Jhalana Doongri, Jaipur.

... Applicant

(By Advocate: Mr. P.N. Jatti)

Versus

1. Union of India through the Registrar General, 2A Mansingh Road, New Delhi.
2. The Joint Director, Census, Office of the Directorate of Census Operation 6B, Jhalana Doongri, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

This is the second round of litigation. Earlier the applicant had filed an OA No. 49/2009, which was decided by this Bench vide order dated 24.02.2009 with the direction to respondent no. 2 of that OA (The Deputy Director, Census, Office of the Directorate of Census Operation, Jaipur) to decide the representation of the applicant dated 27.01.2009 within a period of three months from the date of receipt of a copy of the order.

In compliance of this order, the respondents passed an order

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dated 23.05.2011 (Annexure A/1) vide which the representation of the applicant has been rejected.

2. Being aggrieved, the applicant has filed the present OA praying for the following reliefs:-

- "(8.1) That by a suitable writ/order or the direction the impugned order vide Annexure A/1 dated 23.05.2011 be quashed and set aside.
- (8.2) That further the respondents be directed to allow the higher pay scale of II ACP with effect from 26.02.2004 and the order dated 04.02.2008 be modified.

3. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was appointed as Hand Press Machine Operator on 27.02.1980. This appointment of the applicant was for a technical job of operating Hand Press Machine. The applicant was quite expert in his work. That the applicant was given higher pay scale of ACP-I with effect from 09.08.1999.

4. That the respondents without giving any reason changed the applicant's job of Hand Press Machine Operator and he was allotted the typing work. To change the applicant's duty of Hand Press Machine Operator to that of Typist was an arbitrary act of the respondents. Therefore, the ACRs of the applicant after the change of job were not as good as prior to 09.08.1999. The applicant was entitled for second ACP with effect from 2004 but the applicant has been given the benefit of second ACP with effect from 17.01.2008 vide order dated 04.02.2008 (Annexure A/4).

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5. The learned counsel for the applicant also submitted that when the job of the applicant was changed to that of Typist, he was not given any training for the new job. Further since the applicant was a technical hand, he could not perform the file/typing job work with the same ease as he was performing his technical job. However, the applicant performed the work very sincerely and never disobeyed his superiors. The applicant brought these facts to the notice of the authorities concerned but his request was not accepted by the respondents. The result was that the applicant was given second ACP from 2008 instead of 2004. Therefore, the learned counsel for the applicant prayed that the respondents be directed to allow higher pay of second ACP to the applicant with effect from 26.02.2004 instead of 17.01.2008.

6. On the other hand, the respondents have filed their written reply. The respondents have stated that the case of the applicant for grant of second ACP with effect from February, 2004 was duly considered by the competent authority and the same was rejected by a reasoned & speaking order vide order dated 22.05.2009 (Annexure R/1). The case of the applicant was considered by the Departmental Screening Committee in the year 2004, 2005 and 2006. However, the applicant was not considered fit for grant of second ACP as he failed to achieve the bench mark 'Good'.

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7. The applicant again submitted a representation dated 31.08.2010 and the same has also been duly considered by the competent authority as per the relevant rules on the subject and after considering the same, the competent authority has rejected the representation by a reasoned & speaking order dated 23.05.2011 (Annexure A/1).

8. The respondents have submitted that the case of the applicant was again considered by the Departmental Screening Committee and on the basis of the recommendations made by the Departmental Screening Committee, the benefit of second ACP has been given to the applicant with effect from 17.01.2008 vide order dated 04.02.2008. Therefore, the action of the respondents is according to the law and ACP Scheme. Hence the OA of the applicant deserves to be dismissed.

9. The respondents have submitted that the applicant was initially appointed to the post of Hand Press Machine Operator on 27.02.1980. Due to change in technology for mapping and progressive computerization of mapping work, task that HPMOs were to perform ceased to exist. Consequently, the incumbents of the posts of HPMO were all deployed to do the work equivalent to their competence at the level of simple clerical and similar equivalent job.

10. The respondents have stated that the applicant was granted the first ACP with effect from 09.08.1999. Thereafter the ACR of the applicant since 1998-99 were taken

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into consideration for the grant of second ACP. The Departmental Screening Committee did not find the applicant fit for the second ACP for the years 2004, 2005 and 2006 as the applicant failed to secure the prescribed bench mark 'Good'. However, he was granted second ACP with effect from 17.01.2008. The learned counsel for the respondents submitted that in view of the facts, as stated above, the OA has no merit and it should be dismissed with costs.

11. The learned counsel for the applicant has filed a rejoinder.

12. Heard the learned counsel for the applicant and perused the documents on record.

13. It is not disputed between the parties that the applicant was initially appointed as Hand Press Machine Operator in 1980. That on completion of requisite service, the applicant was granted first ACP with effect from 09.08.1999. However, according to the respondents due to change in technology and computerization of mapping work, the task that HPMOs were to perform ceased to exist. Consequently, the incumbents of the post of HPMO including the applicant were deployed to do the work equivalent to their job at the level of simple clerical and similar equivalent job. Therefore, the applicant's job was changed from Hand Press Machine Operator to that of Clerk/Typist. We are not inclined to agree with the arguments of the learned counsel for the applicant that this decision of the respondents to change the work of the applicant from Hand

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Press Machine Operator to that of Clerk/Typist was an arbitrary act or against the rules. Under the circumstances as explained by the learned counsel for the respondents, the work of not only the applicant but also of other Hand Press Machine Operators was also changed in the interest of the employees concerned. If due to change of technology for mapping and progressive computerization of the mapping work, the task that was being performed by Hand Press Machine Operators ceased to exists, the respondents either could have declared the employees working as Hand Press Machine Operators as surplus or they could have been deployed within the organization. In the interest of the employees, the respondents re-deployed the employees who were working as Hand Press Machine Operators to other jobs. Therefore, we do not find any illegality or arbitrariness in the action of the respondents in re-deploying the applicant from the job of Hand Press Machine Operator to a clerical/typist work in the organization.

14. It is also admitted between the parties that the applicant was given the first MACP on 09.08.1999. The respondents have categorically mentioned that the case of the applicant was considered by the Departmental Screening Committee on 11.03.2004, 04.03.2005 and 02.02.2006 but the applicant was not found fit as he failed to secure prescribed bench mark 'Good' as per the ACP Scheme. However, the case of the applicant was again considered by the Departmental Screening Committee and on the basis of the recommendations made by the Departmental Screening Committee, the benefit of the second ACP has been

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accorded to the applicant with effect from 17.01.2008 vide order dated 04.02.2008. Every employee to get the second ACP has to achieve the prescribed bench mark. In the case of the applicant, he failed to achieve prescribed bench mark in the year 2004, 2005 and 2006. However, when he achieved bench mark, he was accorded the benefit of second ACP with effect from 17.01.2008. Thus we do not find any illegality or irregularity in the action of the respondents in granting the second ACP with effect from 17.01.2008 instead of 26.02.2004.

15. On the basis of above discussion, we are of the opinion that the applicant has failed to make out any case for the interference by the Tribunal in the present OA. Consequently the OA being bereft of merit is dismissed with no order as to costs.

Chameli Majumdar
(SMT. CHAMELI MAJUMDAR)
MEMBER (J)

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

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