

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-411/2014

New Delhi, this the 21st day of November, 2016.

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Shekhar Agarwal, Member (A)**

Sh. Adnan Gilani,
S/o Sh. Z.A. Gilani,
Aged about 38 years,
R/o, C-12/326, Yamuna Vihar, Delhi-110053
And working as Project Manager (C), under the
Respondents, presently posted at NBCC,
Hyderabad (A.P.) ...

... Applicant

(through : Sh. S.S. Tiwari)

Versus

1. National Buildings Construction Corporation Ltd, through Its Chairman-cum-Managing Director, NBCC Bhavan, Lodhi Road, New Delhi-110003.
2. Director (Projects), NBCC Ltd, NBCC Bhavan, Lodhi Road, New Delhi-110003.
3. Executive Director (HRM), NBCC Ltd, NBCC Bhavan, Lodhi Road, New Delhi-110003. ... Respondents

(through Sh. D.K. Devesh)

ORDER(ORAL)

Hon'ble Mr. Justice Permod Kohli

The applicant was serving as Deputy Project Manager (Civil) with respondent No. 1 corporation during the period 2005-09. ACRs for the said

period were not communicated to him. The applicant, however, claims to be promoted as Project Manager from the year 2009 onwards and having become due for further promotion to the post of Deputy General Manager in the year 2010.

2. It appears that on the basis of his ACRs, the applicant was denied promotion whereas his juniors were promoted as Deputy General Manager in the year 2011. The applicant made RTI query seeking information regarding his ACRs for the period 2005-06 to 2010-13. In response to his query, he was furnished with ACR grading for the aforesaid years. He was provided with copies of ACRs for the period 2005-06, 2008-09 and 2010-11, as is evident from letter dated 03.01.2013. Similarly, he was also provided with copies of ACRs for the period 2003-05 and 2006-08 vide another communication dated 19.01.2013. Further ACRs for the period 2010-11 were provided to him vide communication dated 18.05.2013 (all part of Annexure-B). On receipt of copies of ACRs, the applicant found that his earlier grading has been downgraded for different periods. The applicant, accordingly, made three representations. He made first representation/appeal dated 08.03.2013 for rectification / upgradation of gradings recorded in ACRs for the period 2008-09, 2009-10 and 2010-11. Another representation/appeal dated 28.11.2013 for upgradation of grading for the year 2011-12, and yet another representation/appeal dated 13.12.2013 for upgradation of ACR for the year 2012-13. All the above representations/appeals have been rejected by the respondents vide order dated 30.09.2013 in respect to ACRs for the period 2008-09, 2009-10 and 2010-11, order dated 17.12.2013 in respect to ACR for the period 2011-12, and order dated 30.12.2013 in respect to ACR for the period 2012-13. The rejection orders are similar in all the cases. One of the rejection order dated 30.09.2013 is reproduced hereunder:

"Please refer your grievance dated 08.03.2013 requesting therein for review and up gradation of ratings recorded in his ACRs for the period 2008-09, 2009-10 and 2010-11 which was further registered at Sl. No. 183 in the Grievance register.

It is to inform you that your grievance was put up to CGC in its meeting held on 17.08.2013. Your grievance was examined in reference to the rules of the Company. The committee is of the view that as per rules of the Company as well as the guidelines of high power committee, your grievance does not deserve any merit. Hence, the same stands disposed off.

You are requested to take strict note of the above please."

During the course of hearing, Sh. S.S. Tiwari, learned counsel appearing on behalf of the applicant and Sh. D.K. Devesh, learned counsel appearing on behalf of the respondents, have taken us through the ACRs in question. We have noticed the following:

YEAR	PERIOD	GRADING BY REPORTING OFFICER	GRADING BY REVIEWING OFFICER	GRADING BY ACCEPTING OFFICER
2005-06	07.05.2005-31.12.2005	A	A	C
2006-07	01.04.2006-31.03.2007	B	B	A
2007-08	01.04.2007-07.07.2007	A	A	A
2008-09	01.04.2008-31.03.2009	A	B	B
2009-10	01.04.2009-31.03.2010	B	D	D
2010-11	01.04.2010-31.03.2011	D	B	C
2011-12	01.04.2011-31.03.2012	C	C	C
2012-13	01.01.2012-31.03.2013	C	D	D

3. From the perusal of the ACRs, we find that there have been some discrepancies in recording of the grading by the concerned reporting/accepting officers. For example, in one of the ACRs for the period 2006-07, we find that reporting and reviewing authorities have given grading 'B' to the applicant whereas accepting officer, by recording reasons, upgraded

the same to 'A'. However, the Director(Project) has downgraded the same to 'B' without recording any reasons. We also do not know as to under what authority, the Director (Project) has made remarks and downgraded the grading of the applicant.

4. Be that as it may, it was for the competent authority to have thoughtfully considered the representations of the applicant against the ACRs for which he has raised grievances before the respondents. From the rejection orders noticed hereinabove, we find that no reasons have been recorded for rejection of the representation/appeal of the applicant, even though most of the representations/appeals placed on record contain various grounds for challenging the ACRs. In absence of reasons, the validity of the orders cannot be examined. It is settled law that where any action/order affects civil rights of a person, recording of reasons even in case of administrative orders is *sine qua non* for the validity of the orders. The competent authority has to carefully consider the representation/appeal on the grounds urged therein and then after due application of mind have to adjudicate thereupon by adopting objective criteria. That has not been done in the present case.

5. All the impugned orders dated 30.09.2013, 17.12.2013 and 30.12.2013 are not sustainable in law and are hereby set aside. Sh. S.S. Tiwari, learned counsel appearing on behalf of the applicant submits that for fair consideration, the applicant may also be permitted to make an additional representation since the respondents are yet to take a final decision pursuant to setting aside of the impugned orders. We do not feel that the applicant should be deprived of his right to make further representation.

6. In this view of the matter, the applicant is permitted to make a comprehensive representation within a period of four weeks. The respondents

are directed to reconsider representations of the applicant including the one the applicant may make pursuant to this order and take decision thereon in accordance with law including various OMs issued by DoPT, within a period of four months from the date of receipt of fresh additional representation. It goes without saying that the decision taken by the respondents must be speaking and reasoned one and communicated to the applicant who shall have the liberty to seek remedial measures, if aggrieved.

(Shekhar Agarwal)
Member (A)

(Justice Permod Kohli)
Chairman

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