Central Administrative Tribunal
Principal Bench

OA No.776/2014

New Delhi, this the 9th day of December, 2015

Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

Dr. Shashi Gupta
W/o Dr. B.B. Gupta,
2A/40, Ramesh Nagar,
New Delhi ï 110 015. ...Applicant

(By Advocate: Sh. Anil Aggarwal)

Versus

1. Director General
ESIC Corporation
Panchdeep Bhawan,
CIG Road, New Delhi.

2. The Secretary,
Union Ministry of Labour and Employment
Shram Shakati Bhawan,
Rafi Marg, New Delhi. ...Respondents

(By Advocate: Sh. Murari Kumar)

O R D E R (ORAL)

By Mr. A.K. Bhardwaj, Member (J):

The DPC held on 06.09.2012 considered the applicant for his promotion to SAG (Senior Administrative Grade) w.e.f. 06.08.2011 and found her unfit. Thus, the applicant filed the present OA.

2. The salient plea raised on behalf of the applicant is that there was inconsistency in recording his ACR for the year 2006-07. Confronted with the pointed query that the grading in the ACR is not under challenge before this Tribunal in the present OA, he submitted that the pleas were raised in the representation and the respondents rejected the same by way of a non-speaking order.

3. We find that the order dated 14.02.2012 passed by the respondents in representation dated 20.09.2011 made by the applicant is non-speaking and

cryptic. In terms of the OM No.21011/1/2010-Estt.A dated 13.04.2010 issued by the DoP&T while considering the representation against the grading in the ACR, the competent authority should decide the matter objectively in quasi-judicial manner and on the basis of the material placed before him. The OM read thus:-

> ***"Below Benchmark gradings in ACRs prior to the reporting period 2008-09 and objective consideration of representation by the competent authority against remarks in the APAR or for upgradation of the final grading.--*** *Prior to the reporting period 2008-09, only the adverse remarks in the ACRs had to be communicated to the concerned officer for representation, if any to be considered by the competent authority. The question of treating the grading in the ACR which is below the benchmark for next Promotion has been considered in this Department and it has been decided that if an employee is to be considered for promotion in a future DPC and his ACRs prior to the period 2008 09 which would be reckonable for assessment of his fitness in such future DPCs contain final grading which are below the benchmark for his next promotion, before such ACRs are placed before the DPC, the concerned employee will be given a copy of the relevant ACR for his representation, if any, within 15 days of such communication. It may be noted that only below benchmark ACR for the period relevant to promotion need be sent. There is no need to send below benchmark ACRs of other years.*
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> *2. As per existing instructions, representations against the remarks or for upgradation of the final grading given in the APAR (previously known as ACR) should be examined by the competent authority in consultation, if necessary, with the Reporting and the Reviewing Officer, if any. While considering the representation, the competent authority decides the matter objectively in a quasi-judicial manner on the basis of material placed before it. This would imply that the competent authority shall take into account the contentions of the officer who has represented against the particular remarks/grading in the APAR and the views of the Reporting and Reviewing officer if they are still in service on the points raised in the representation vis-a-vis the remarks/gradings given by them in the APAR. The UPSC has informed this Department that the Commission has observed that while deciding such representations, the competent authorities sometimes do not take into account the views of Reporting /Reviewing Officers if they are still in service. The Commission has further observed that in a majority of such cases, the competent authority does not give specific reasons for upgrading the below benchmark ACR/APAR gradings at par with the benchmark for next promotion.*
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> *3. All Ministries/Departments are therefore requested to inform the competent authorities while forwarding such cases to them to decide on the representations against the remarks or for upgradation of the grading in the APAR that the decision on the representation may be taken objectively after taking into account the views of the concerned Reporting/Reviewing Officers if they are still in service and in case of upgradation of the final grading given in the APAR, specific reasons therefor may also be given in the order of the competent authority."*

4. The order passed by the respondents in the representation of the applicant is ex facie contrary to the spirit of the aforesaid OM of the DoP&T and is quashed. The respondents are directed to decide the representation dated 20.09.2011 made by the applicant by a detailed, reasoned and speaking

order in a quasi-judicial manner within a period of eight weeks, and if the decision results in change in grading of the ACR of the applicant for the year 2006-07, the recommendations of the DPC regarding suitability would be reviewed. The OA stands disposed of with no order as to costs.

(Dr. B.K. Sinha)
Member (A)

(A.K. Bhardwaj)
Member (J)

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