

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.729/2013

Order reserved on 29th November 2016

Order pronounced on 22nd December 2016

**Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Ms. Pratibha Jain
Assistant Accounts Officer (Under Ministry of Finance)
Department of Expenditure
Presently posted at Pay & Accounts Officer (Extension)
M/o Agriculture, Shastri Bhawan, New Delhi
r/o C-4 C/14/164 Janak Puri, New Delhi

(Mr. V K Sharma, Advocate)

..Applicant

Versus

1. Union of India (through the Secretary to the Govt. of India)
Ministry of Finance, Department of Expenditure
Central Secretariat, Parliament Street, New Delhi
2. The Controller General of Accounts
(Ministry of Finance) Department of Expenditure
Lok Nayak Bhawan, 7th Floor, Khan Bhawan
New Delhi
3. The Joint Controller General of Accounts
Office of Controller General of Accounts
(Ministry of Finance) Department of Expenditure
Lok Nayak Bhawan, 7th Floor, Khan Bhawan
New Delhi
4. The Station Engineer
Prasar Bharti/Broadcasting Corporation of India
Central Stores, Akashvani Bhawan
Parliament Street, New Delhi -1

..Respondents

(Mr. H K Gangwani, Advocate)

ORDER

Mr. K.N. Shrivastava:

The applicant has filed the instant O.A. under Section 19 of the Administrative Tribunals Act, 1985 praying for the following main reliefs:-

“(a) That bald order dt. 10.02.2012 (Annexure A-2) and Para-2 of Impugned orders dt. 12.07.2012 (Annexure A-1) in respect of rejecting her representation against adverse entries in A.C.R. of the period 01.04.2005 to 30.11.2005, passed by the Respondents without assigning any reasons and without considering it with due implication of mind, by the Competent Authority may kindly be ordered to be set-aside by this Hon’ble Tribunal.

(b) That Adverse comments recorded in her A.C.R. for the period 01.04.2005 to 30.11.2005, may kindly be ordered to be expunged by this Hon’ble Tribunal in consideration of the grounds raised in this O.A.

(c) That she may be ordered promotion as Pay & Accounts Officer/ Accounts Officer from the date her next Junior was promoted by the respondent authorities and granted all consequential benefits of such promotion with resultant arrears.

(d) That on setting-aside the said adverse entries of the period 01.04.2005 to 30.11.2005, she may be granted M.A.C.P. upgradation as per the Rules w.e.f. date of eligibility w.e.f. 01.09.2008, with consequential arrears.”

2. The brief facts of the case are as under:-

2.1 The applicant joined as Junior Accounts Officer (JAO) under respondent No.2 on 31.12.1993. She was promoted as Assistant Accounts Officer (AAO) w.e.f. 19.0.1968 (Annexure A-3). She was further promoted as Accounts Officer (AO) on 01.04.2012. Her claim is that after putting in two years of service as AAO, she was entitled for promotion as AO in the year 2001 itself.

2.2 Apparently, the Departmental Promotion Committee (DPC) met in January 2011 in which the applicant’s case for promotion was also considered. The DPC noticed that her Annual Confidential Reports (ACRs) for the year 2003-04 and for the period 01.04.2005 to 30.11.2005 contained adverse remarks, which were communicated to the applicant vide Annexure A-6 letter dated 27.01.2011.

2.3 On receipt of her representation against the adverse remarks in her two ACRs, the competent authority vide Annexure A-8 letter dated 27.09.2011 decided to expunge the adverse remarks contained in the ACR for the year 2003-04 but at the same time also decided to retain the adverse remarks in her ACR for the period 01.04.2005 to 30.11.2005.

2.4 Aggrieved by the retention of the adverse remarks in her ACR for the period 01.04.2005 to 30.11.2005, the applicant represented again but the competent authority vide Annexure A-2 impugned order dated 10.02.2012 informed her that the adverse remarks in her ACR for the period 01.04.2005 to 30.11.2005 cannot be changed. The same position was reaffirmed by the respondents in the impugned Annexure A-1 communication dated 12.07.2012.

Aggrieved by the impugned Annexures A-1 and A-2 communications, the applicant has filed this O.A. seeking specific reliefs as indicated in paragraph (1) above.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The applicant thereafter filed her rejoinder. With the completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 29.11.2016. Mr. V.K. Sharma, learned counsel for applicant and Mr. H.K. Gangwani, learned counsel for respondents were heard.

4. Learned counsel for applicant, besides reiterating the points raised by the applicant in the O.A. and the rejoinder, submitted that the adverse remarks were communicated to the applicant after eight years. He argued

that as per the judgment of Hon'ble Supreme Court in **Abhijit Ghosh Dastidar v. Union of India & others** (Civil Appeal No.6227/2008) dated 22.10.2008, any adverse entry not communicated is to be ignored while considering the case of the employee concerned for promotion.

Concluding his arguments, the learned counsel submitted that the applicant is entitled for promotion as AO from the due date in the year 2001, and that she is also entitled for financial upgradation in terms of Modified Assured Career Progression (MACP) Scheme as per eligibility.

5. *Per contra*, learned counsel for respondents submitted that applicant's representation against the adverse ACRs was considered and vide Annexure A-8 communication dated 27.09.2011, she was informed that the adverse remarks in her ACR for the year 2003-04 has been expunged by the competent authority and that the adverse remarks in the period 01.04.2005 to 30.11.2005 has been decided to be retained by the competent authority. The cause for challenging the said decision of the competent authority arose from that date. The applicant has filed the instant O.A. on 27.02.2013, as such the O.A. is barred by limitation of time in terms of Section 21 of the Administrative Tribunals Act, 1985, which prescribes a time limit of just one year. It is also stated that the subsequent representations would not give limitation, as has been held by the Hon'ble Supreme Court in the case of **E. Parmasivan & others v. Union of India & others** [JT 2002 (5) SC 367].

Concluding his arguments, the learned counsel submitted that the O.A. deserves to be dismissed on the ground of limitation itself.

6. We have considered the arguments of learned counsel for the parties and have also perused the pleadings and documents annexed thereto.

7. The factual matrix of the case is not in dispute. Prior to the judgment of the Hon'ble Apex Court in **Dev Dutt v. Union of India & others**, [2008 (7) SCALE 403] in the year 2008, there was no requirement of communicating the ACRs, which *prima facie* did not appear to be adverse. The scenario after the decision in **Dev Dutt** has completely changed. It is now mandatory to communicate all his ACRs to the officer concerned. Accordingly, the Department of Personnel & Training has issued O.M. No.2101/1/2010-Estt.A dated 13.04.2010. Hence, we do not find any fault with the respondents in not communicating the ACRs for the year 2003-04 and for the period 01.04.2005 to 30.11.2005 to the applicant within a reasonable period of time after such ACRs were written.

8. The ACRs for these two periods were communicated to the applicant vide Annexure A-6 letter dated 27.01.2011. After considering her representation, the competent authority vide Annexure A-8 letter dated 27.09.2011 decided to expunge the adverse remarks contained in the ACR for the year 2003-04 but at the same time also decided to retain the adverse remarks in her ACR for the period 01.04.2005 to 30.11.2005 (Annexure A-8). The applicant ought to have approached this Tribunal against the Annexure A-8 communication within a year thereafter in terms of Section 21 of the Administrative Tribunals Act, 1985. We accept the arguments of learned counsel for respondents that in terms of the judgment of Hon'ble Apex Court in **E. Parmasivan** (supra), repeated representations will not

give limitation. This view is also fortified by the decision of Hon'ble Apex Court in **S. S. Rathore v. State of M.P.**, AIR 1990 SC 10.

9. The argument of the learned counsel for applicant is that if the ACRs containing any adverse remarks have not been communicated to the applicant, then such ACRs are to be ignored for considering the officer concerned for promotion in terms of the decision in **Abhijit Ghosh Dastidar** (supra). In the instant case, the adverse remarks in the ACRs for the year 2003-04 and for the period from 01.04.2005 to 30.11.2005 have been communicated to the applicant, *albeit* belatedly. As observed by us in paragraph (7) above, prior to **Dev Dutt** (supra), there was no requirement of communicating the ACRs to the concerned officials in case the ACRs *prima facie*, were not containing adverse remarks.

10. In the conspectus of the discussions in the foregoing paragraphs, we are of the opinion that the applicant has not been able to provide any cogent reasoning for inordinate delay at her end in challenging the Annexure A-8 communication from the respondents dated 27.09.2011 as well as impugned Annexures A-1 & A-2 communications dated 12.07.2012 and 10.02.2012 respectively. The O.A. has been filed on 27.02.2013. Hence we are of the view that the O.A. is time barred. On this ground, it is dismissed.

No order as to costs.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

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