

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

OA No.1804/2016

This the 20th day of May, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Sh. Baljeet Singh Chhabra,
S/o late Sh. H.S. Chhabra,
Aged about 54 years,
R/o D-166, Sector-18,
Rohini, Delhi-110089
Working as Dy. Director General,
NSSO (FOD), 1/3, N.S. Road,
Malda,
West Bengal.-732101. Applicant

(By Advocate: Shri K.M. Singh)

Versus

1. Union of India
Ministry of Statistics & Programme
Implementation,
Sansad Patel Bhawan,
Sansad Marg,
New Delhi-110001
(Through : The Secretary)
2. Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi-110011.
(Through: The Secretary)
3. Ms. Vishu Maini (DOB: 19.03.1959)
Working as Dy. Director General
(respondent No.3 to be served through
Respondent No.1). Respondents

ORDER(ORAL)**Hon'ble Mr. Justice Permod Kohli,Chairman**

Heard.

2. Issue notice.
3. Shri Hanu Bhaskar and Shri R.V.Sinha, learned counsel appear and accept notice on behalf of respondent Nos. 1 and 2 respectively.
4. The applicant had earlier come to this Tribunal in OA-917/2010 which came to be disposed of vide order dated 06.08.2010. The operative part of the said order reads as under:

“ 4. We allow this application with direction to the respondents to convene Review DPC wherein ACR of the applicant for the year 2002-03 shall not be taken into consideration. Instead, the DPC would taken into consideration the earlier ACR of the applicant for the year 2001-02 along with other relevant ACRs which were already under consideration, to re-assess the applicant for promotion to SAG. If otherwise found fit, the applicant shall be entitled to promotion to SAG and all consequential reliefs from the date his junior was promoted. Let this exercise be done as expeditiously as possible and preferably within a period of six weeks from today.”

4. Respondent UOI preferred a Writ Petition (Civil) No.3787/2011 before the Hon'ble High Court of Delhi which came to be disposed of vide judgment dated 30.05.2011

whereby the impugned judgment of the Tribunal was set aside . The operative part of the said order reads as under:

“6. In the present case also the Tribunal has followed the decision dated 21.08.2009 in Krishna Mohan Dixit(supra) and accordingly the directions given in paragraph 4 of the impugned order dated 6th August, 2010 have be reversed. We accordingly, set aside the directions given in paragraph 4 of the impugned order dated 6th August, 2010. Instead the direction given in order dated 8th October, 2010 in Writ Petition(Civil) No.6013/2010 titled Union of India Vs. Krishna Mohan Dixit will apply. The parties will also comply with and adhere to the time period specified in paragraph 22 of the said decision. The time period will begin from the date this order is received in the office of the petitioner.

7. The Writ Petition is accordingly disposed of.”

5. The directions contained in para 22 of the judgment in WP(C)No.6013/2010 UOI Vs. Krishna Mohan Dixit, and adopted by the Hon’ble High Court are noticed in para 5 of the order dated 30.05.2011 passed in WP(C) No.3787/2011. Relevant directions are reproduced herein below:

“22. In view of the aforesaid, we are of the considered view that the orders passed by the Tribunal in all these cases cannot be sustained. Thus the orders passed by the Tribunal would stand modified to the extent that the adverse stand ACRs which falls within the consideration zone i.e. in the relevant 5 years before the date of holding the DPC, if not communicated earlier but are below bench mark would be communicated within a period of 4 weeks from today to the incumbent officer if not communicated so far. The respondent would then be eligible to make a representation within 15 days thereof if not made already, and that such representation would be decided by the competent authority, which of course, would be higher in rank to the authority who gave the adverse ACR within next 2 weeks irrespective of the fact whether the Reporting Officer or the Reviewing Officer or both are available or not. In case, the ACR is upgraded, making the incumbent eligible for consideration, review DPC would be held based upon the reappraised ACRs for the relevant period within six weeks. In case, the review DPC finds the incumbent fit for promotion the benefit thereof would be given to him from

the date, when he was entitled for promotion to the next post had the ACR in question would not have been considered averse to him with all consequential benefits."

6. Earlier, the applicant had made representation dated 03.05.2010 against certain adverse remarks in his ACRs, and requested for expunction of the same and upgradtion of the ACR gradings for the period in question. The said representation of the applicant was considered and the adverse entries in his ACRs were expunged, and his overall grading upgraded to 'very good' for the period from 01.05.2003 to 31.03.2004 and 01.04.2004 to 07.07.2004 by the cadre controlling authority, vide order dated 09.07.2010.

7. The grievance of the applicant in the present OA is that despite upgradation of his ACRs, no review DPC has been constituted to consider his claim for promotion from post of JAG to SAG w.e.f. 11.12.2009, i.e., the date of promotion of his immediate junior. The applicant made representation dated 20.07.2010 and 21.10.2010 (Annexure A-8). These representations have been pending on account of various departmental correspondences between the DOP&T and the applicant's department. Since the matter regarding upgradation of the uncommunicated ACRs was also referred to a larger Bench of the Apex Court, the issue remained under consideration. However, on disposal of the reference by a 3-Judge Bench in case

of ***Union of India v. A.K.Goel*** (Civil Appeal No.2872/2010 with SLP (C)No.17098 and 17099/2011), decided on 27.11.2014, the applicant made another representation dated 04.12.2014(Annexure A-11). No decision has been taken on the aforesaid representation also till date.

8. In view of above, we dispose of this OA at the admission stage itself with a direction to the respondents to consider the representation of the applicant in the light of the aforesaid directions of the High Court, and take a decision within a period of three months from the date of receipt of a copy of this order.

(K.N. Shrivastava)
Member(A)

(Permod Kohli)
Chairman

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