

Central Administrative Tribunal
Principal Bench
New Delhi

M.A.No.3527/2016
in
C.P.No.157/2016
in
O.A.No.2090/2014

Order Reserved on: 06.12.2016
Order pronounced on 09.12.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Dr. Birendra Kumar Sinha, Member (A)

Shri Yogendra Babu Sharma,
Executive Engineer
Central Ground Water Board
R/o 85-D,GPRA, Indira Nagar
Gachibowli,
Hyderabad - 500032 ... Applicant

(By Advocate: Ms. Meenu Mainee)

Versus

1. Shri Shashi Shekhar
Secretary,
Union of India through
Ministry of Water Resources,
Government of India,
Sharam Shakti Bhawan,
Rafi Marg, New Delhi 110 001.
2. Dr. A.K.Sihag
The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi 110 069.

3. Shri K.B.Biswas
Chairman,
Central Ground Water Board,
Bhujal Bhawan, N.H.-IV,
Faridabad 121 001. ... Respondents

(By Advocate: Shri P.K.Singh for Shri Rajeev Kumar)

ORDER

By V. Ajay Kumar, Member (J):

Heard the learned counsel for the miscellaneous applicant.

2. MA 3527/2016 is filed seeking to revive the CP No.157/2016, which was closed by Order dated 25.10.2016 of this Tribunal, after recording its satisfaction about the compliance of the orders of this Tribunal in OA No.2090/2014.

3. The OA No.2090/2014 filed by the applicant challenging the promotion of one Shri J.C.Borogohain (4th Respondent in the OA), Executive Engineer to the post of Superintending Engineer, was disposed of by Order dated 12.03.2015, as under:

"18. In the facts of the case, we are of the view that the ACR of the applicant for the year 2007-08 should not have been taken into account by the DPC in its meeting held on 15.05.2014, as he had worked hardly for 52-53 days during the aforesaid period, which is less than three months, and it should have been treated as no ACR in view of the General Principles on Preparation and Maintenance of APAR for Central Civil Services and DOP&T OM No.51/5/72-Estt. 'A' dated 20.05.1972. We, therefore, dispose of this Application with the direction to the respondents to hold a review DPC treating the ACR for the year 2007-08 as no ACR, and in place thereof to consider the ACR for the year 2003-04. It is further provided that the DPC should also consider the ACR for the year 2005-06 as it is there on record, and give specific finding as to how it has been treated. The above direction is to be carried out by the respondents within three months from the date of production of certified copy of this order.

19. With the above order/directions, the Application stands finally disposed of, but without costs."

4. The MA No.935/2015 in OA No.2090/2014, filed by the applicant, seeking certain corrections in the order dated 12.03.2015 in OA No.2090/2014 was allowed by Order dated 06.04.2015, as under:

"By means of the misc. Application no.935/2015, the applicant has sought correction in para 18 of our order dated 12.03.2015 in OA No.2090/2014. It appears that after disposal of the matter, the applicant sent letter dated 16.03.2015 seeking necessary correction in our order in respect of year of the ACR to be considered by the review DPC. The said application by the order of Chairman was directed to be listed for orders in the Court. It is accordingly placed today.

It is stated in the application that in para 18 of our order dated 12.03.2015, the respondents have been directed to hold a review DPC treating the ACR for the year 207-08 [sic. 2007-08] as 'No ACR' and in place thereof, to consider the ACR for the year 2003-04. However, the ACR for the year 2003-04 since has already been considered by the DPC in place of ACR for the year 2008-09, an error has crept in the order by directing to consider the ACR of 2003-04 instead of 2002-03 against the no;. ACR for the year 2007-08. It has further been stated that in the aforesaid para 18 of our order, the respondent are directed to consider the ACR for the year 2005-06 after giving specific finding as to how it has been treated. However, the said finding is in respect of the entry of the year 2006-07 and, therefore, the respondents may be directed to consider the ACR for the year 2006-07 in place of 2005-06.

Learned counsel for the respondents who was also served with the copy of the application/letter dated 16.03.2015, was granted time to examine the same and to inform the Bench on the next date as to whether the aforesaid mistakes have crept in on account of typing error or not. When the matter was taken up today, learned counsel for the respondents having examined the application of the applicant, fairly submitted that the mistakes appear to have crept in due to typing error and the same may be corrected as prayed in the application.

We are also of the view that since the ACR for the year 2003-04 has already been considered against the ACR of 2008-09, the respondents shall consider the ACR for the year 2002-03 in place of 2003-04 for the no ACR of 2007-08.

Now coming to another mistake, i.e. ACR for the period 2005-06 in place of 2006-07, we notice after perusal of the record that the grading for the year 2006-07, we notice after perusal of the record that the grading for the year 2006-07, we notice after perusal of the record that the grading for the year 2006-07 is recorded as 'very good' though 'average' was recorded by the reporting officer and;

Very good by the reviewing as well as the accepting officers. However, it is not clear as to how the DPC treated the aforesaid entry and, therefore, we directed that the DPC should consider ACR for the year 2006-07, 2005-06 is typed. The aforesaid mistake appears to have crept in or account of typing error. Therefore, the correction sought for is allowed. In our order dated 12.03.2015 in OA No.2090/2014, in para 18 in place of 2003-04, it should be read as 2002-03, and in place of 2005-06, it should be read as 2006-07.

With the above order, the misc. Application stands allowed."

5. The Review Application No.73/2016 in OA No.2090/2014, filed by the 2nd Respondent-UPSC, was dismissed by order dated 31.05.2016.

6. The CP No.157/2016 in OA No.2090/2014 filed by the applicant alleging violation of the orders of this Tribunal in OA No.2090/2014, as corrected in MA No.935/2015, was closed on 25.10.2016, after recording satisfaction about the substantial compliance of the orders of this Tribunal, as under:

"5. The Committee found that apart from the specific entries mentioned above, entries that have been retained in the relevant columns also mostly did not reflect performance/ability that could be treated as more than 'Good'. Hence, with regard to the ACR for 2006-07, the 6 review DPC again found that there has been interpolation in the record in the following terms:-

"5.2 Again in Column 4, which relates to general remarks given by the Reporting Authority and mentioned work of the Officer and the Grading, the Review Officer has noted "I agree with the Comment" implying that he agrees with the general remarks as well as 'Average' grading recorded by the Reporting Officer. Thereafter, what appears to be interpolation and overwriting it has been written "He cannot be graded below V. Good and is graded V. Good'. Apart from the last word 'Good', the rest of this sentence appears to be subsequent additions and, therefore, suspicious. In any case, while the Reporting Officer has given detailed remarks on each attribute/parameter, the Reviewing Officer has not given any reasons/justifications to contradict. The ACR does not bear any remarks of an Accepting Authority."

Consequent of the DPC was that in view of the remarks given and discounted for the interpolation, the applicant could not have been awarded more than 'Good'. Hence, the Committee found the applicant 'Unfit' as he could not achieve the requisite benchmark grading in the ACRs.

6. On the basis of the above, we are satisfied that the respondents have substantially complied with the orders of this Tribunal and the CP is, thus, closed. Notices are discharged. No costs."

7. The learned counsel for the miscellaneous applicant tried to reargue the entire case on merits while seeking revival of the CP, which is not permissible as per law.

8. Once this Tribunal records its satisfaction about the substantial compliance of the orders of this Tribunal by the respondents and closed the Contempt Proceedings, the same cannot be reopened or revived except on showing any valid ground, such as fraud or bona fide mistake in recording the said satisfaction. The applicant failed to show any such valid reason.

9. In the circumstances and for the aforesaid reasons the MA is dismissed. No costs.

(Dr. Birendra Kumar Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

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