

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

OA No.3595/2015

This the 22nd day of November, 2016

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

Dr. K.S. Sethi, W/o Dr. S. Sethi
R/o D 64-65 IInd Floor Amar Colony
Lajpat Nagar IV, New Delhi-24
Aged about 58 years
(Prsently: CMO in Ministry of Ayush)Applicant

(Through Advocate: Shri Ajesh Luthra)

Versus

1. Union of India
Through its Secretary, Department of Ayush
Ministry of Ayush, Nirman Bhawan
C-Wing, New Delhi-110001.
2. Union Public Service Commission
Through its Secretary
Dholpur House, Shahjahan Road
New Delhi-110001.
3. The Director General
Directorate General of Central Govt. Health Scheme
Nirman Bhawan, New Delhi.
4. Ministry of Health & Family Welfare
Through its Secretary
Nirman Bhawan, New Delhi.
5. The Secretary, DoP&T, Ministry of Personnel
Public Grievance of Pensions
North Block, New Delhi.Respondents

(Through Advocate: Shri R V Sinha and Shri Amit Sinha for
Res. No.2
None for Res. Nos. 1,3-5)

Order (oral)

Justice Permod Kohli, Chairman

The applicant was appointed as a Medical Officer (Homeopathy) and joined CGHS on 28.07.1988. He earned promotions as Senior Medical Officer and Chief Medical Officer in the year 1999 and 2001, respectively. The applicant became entitled to be considered for grant of Non Functional Selection Grade on completion of 14 years length of service in Group 'A' post. He was communicated 'below benchmark' ACRs for the year 2001-2002 and 2002-2003 vide communication dated 20.08.2010 for his response thereto. The applicant made representation dated 17.09.2010 in respect to the below bench mark ACRs communicated to him. Vide order dated 11.10.2011 ACRs of various officers including the applicant were upgraded. The applicant's name figured at Sl. No.30 and his ACRs for the period from 2001-2002 to 2002-2003 were upgraded from 'Good' to 'Very Good' with the following remarks against each ACR:-

Sl. No.	Name of officer (designation)	Year	Grading in ACR	UP-graded to	Remarks
30.	Dr. (Smt.) K.S. Sethi D.O.B. 19/07/1957	1999-2000	Good	Very Good	<ul style="list-style-type: none"> • Integrity honest • No adverse entries • Proper assessment and grading has not been done with due consideration

		2000-2001	Good (Not reviewed)	Very Good	<ul style="list-style-type: none"> • Integrity Satisfactory • No adverse entries • Proper assessment and grading has not been done with due consideration
		2002-2003	Good	Very Good	<ul style="list-style-type: none"> • Integrity beyond doubt. • No adverse entries. • Proper assessment and grading has not been done with due consideration

2. In the meantime, vide order dated 30.04.2014, Non Functional Selection Grade was granted to some Chief Medical Officers and some of them were junior to the applicant. However, the applicant was not considered for the grant of the benefit despite upgradation of his ACRs. The applicant was communicated vide letter dated 10.06.2014 that the Departmental Promotion Committee has not found him fit for promotion on the following grounds:-

"(i) Where the competent authority has upgraded/down graded the overall grading without giving sufficient reasons, such an exercise has been treated as non-est/invalid in terms of DOP&T's OM, dated 06/01/2010; and

(ii) An officer attaining at least 4 benchmark gradings i.e. 'Very Good' out of the 5 ACRs, as prescribed by DOP&T's OM dated 08/09/1998 & 16/6/2000 should be assessed as 'fit' for promotion and that this decision should be applicable to all DPCs pertaining to the vacancy year 2003-04 and subsequent years. After due consideration, the DPC

assigned the overall gradings as 'Good' in respect of your ACRs for the years 2001-02 and 2002-03."

3. The applicant, accordingly, made another representation dated 25.09.2014 requesting the competent authority for recording reasons for upgradation of his ACRs as per orders dated 11.10.2011. On consideration of the representation of the applicant, the competent authority recorded reasons for upgradation of the ACRs. The relevant notings reads as under:-

"Para (i) Where the Reporting Officer has agreed with self-appraisal of the officer, it would imply that the officer has totally agreed to what has been stated by the officer reported upon about the work done.

Para(ii) In case Reporting and Reviewing Officer have recorded the ACR in a casual manner i.e. without justifying his remark in various columns, it would be construed as complete non application of mind by Reporting/Reviewing Officer in writing ACR,

Para(iii) In many ACRs, the Reporting/Reviewing Officer while agreeing with the self-appraisal of the officer, have only graded them as 'Good' but have also mentioned 'Good' against each and every column in the ACR, oblivious to its relevance to the attributes. The committee accepted such method of recording of ACRs as casual reporting/reviewing of ACRs with no application of mind and therefore decided that each ACRs must be reviewed and graded as 'Very Good'.

After going through the comments/remarks in the ACR of this officer in the ACR for the period 2001-02 and 2002-03, I am of the view that these ACRs need to be upgraded from **“Good”** to **“Very Good”** in view of above quoted principles. Hence grading of Dr. K.S. Sethi for the period 2001-02 and 2002-03 is upgraded from **“Good”** to **“Very Good”**”

4. Consequent upon the recording of reasons in support of the upgradation of his ACRs as noted herein above, the applicant made another representation dated 27.10.2014 for holding of Review DPC in his case and grant of Non Functional Selection Grade. It appears that this representation was not responded to whereupon the applicant approached this Tribunal by filing OA No. 4329/2014. The said OA was disposed of vide order dated 05.12.2014 with the following directions:-

“4. In the aforesaid context, we direct to the respondents that the representation of the applicant be disposed of through reasoned and speaking order in consonance with rules and instructions within a period of three months during which time, steps will be taken by the respondents to send proposal for convening review DPC which will take a view in the matter.”

5. Consequent upon the aforesaid directions, the respondent No.1 passed the impugned order dated 14.08.2015 (Annexure A-1). In para 2.5 of the impugned

order, reference is made to the directions of the CAT. The same is reproduced hereunder:-

"2.5 Whereas, in view of the direction passed by the Hon'ble CAT as mentioned at para-1 above, the DG, CGHS, Ministry of Health & Family Welfare was requested vide Note dated 05.01.2015 to issue a speaking order justifying the upgradation for the gradings given in the ACRs of Dr. Sethi, Director (CGHS) issued a speaking order justifying the grading from 'Good' to 'Very Good' in the said ACRs of Dr. Sethi vide Note dated 09.03.2015. As per the procedure, the matter was referred to DOP&T on 13.04.2015 seeking their comments in the matter expeditiously so as to convene the Review DPC as per time line given by Hon'ble CAT, New Delhi. DOP&T vide ID Note No.1082249/1076639, dated 08.06.2015 gave the following advice:

'4.....it is stated that the below benchmark ACRs have been communicated to the applicant in terms of this Department OM Dated 13.4.2010 and the representation preferred had already been decided before placing them to DPC. Hence the ACRs have attained finality and the question of ignoring the ACR does not arise. Accordingly, the question of holding review DPC by ignoring valid ACR does not arise.

5. Admin. Ministry is advised to examine representation of Dr. Sethi dated 27.10.2014 in the light of position stated above and in accordance with the OM dated 13.4.2010 and disposed it of through reasoned and speaking order. The case may, thereafter, be reviewed by the Admin Ministry and if required referred to this Department.'"

After referring some DOP&T's OM's, the respondent No.1 recorded the following finding and conclusion:-

"4. Findings

Whereas, the DPC after giving due consideration to the extant instructions of the DOP&T came to conclusion that the common orders A-28013/09-CGHS dated 11.10.2011 and 10.05.2013 passed by the Competent Authority had upgraded the below benchmark grading in the ACRs of various officers in a routine manner without bringing out the

justification of such upgradations. The Committee, therefore, considered the ACRs for the years 2001-02 and 2002-03 as 'Good' instead of 'Very Good' and thus, found her 'Unfit'. Thus, the DPC has followed the due procedure, relevant rules and instructions, *inter alia*, contained in DOP&T's O.M.(s) No.21011/1/2010-Estt.A, dated 13.4.2010 and No.22011/5/2013-Estt(D), dated 09.05.2014 (Annex-IV) and gave justifiable and sustainable reason for not considering the grant of CMO (NFSG) grade to Dr. Sethi; and

5. Conclusion

5.1 Whereas, it is concluded that the DPC has followed the due procedure, relevant rules and instructions, *inter alia*, contained in DOP&T's O.M.(s) No.21011/1/2010-Estt.A, dated 13.4.2010 and No.22011/5/2013-Estt(D), dated 09.05.2014 and gave justifiable and sustainable reasons for not considering the grant of CMO (NFSG) grade to Dr. Sethi and six other doctors;

5.2 Now, therefore, it is found that there is no merit in the representation dated 27.10.2014 of Dr. K.S. Sethi for Review DPC and the same is disposed of accordingly."

6. In para 4, it is recorded that the competent authority upgraded the below bench mark gradings in the ACRs of various officers in a routine manner without bringing out the justification of such upgradation. This averment is contrary to the notings dated 16.10.2014, which is reproduced herein above. These notings clearly demonstrate that applying the principle of upgradation, the Competent Authority has upgraded the ACRs of the applicant by recording reasons. Thus, the respondent No.1 while passing the impugned order was totally oblivious of earlier orders passed by the Competent Authority. We also find that no reference is made to the notings dated 16.10.2014 though subsequent order

dated 09.03.2015 find mention in para 2.5 of the impugned order. However, the Competent Authority without examining the reasoning recorded in the notings dated 16.10.2014 and the order dated 09.03.2015 recorded the above findings contrary to the facts on record and in most arbitrary and unfair manner. In the final conclusion, the respondent No.1 rejected the representation finding no merit for review DPC. The impugned order not only contrary to the facts on record but also speaks of total non application of mind, apart from being in contravention of the directions issued by this Tribunal in OA No. 4329/2014. In view of the clear and categorical directions of this Tribunal dated 05.12.2014, which *inter alia* direct the respondents to take steps to send proposal for convening review DPC, in addition to passing a speaking and reasoned order. Admittedly, in view of the upgradation of the ACRs of the applicant on 11.10.2011, 16.10.2014 and 09.03.2015 by recording reasons, the respondent No.1 had no option but to refer the matter to the UPSC for review DPC for its consideration.

7. Only respondent No.2, i.e., UPSC has filed the counter affidavit in the present case whereas the impugned order has been passed by Res. No.1 i.e., Union of India. Vide interlocutory order dated 10.02.2016, the counsel for

respondent Nos. 1, 3-5 made a statement that he adopts the reply filed by the Commission. Commission's reply is not relevant at all in so far as the question of validity of the impugned order is concerned. The respondent Nos. 1, 3-5 having chosen not to defend the impugned order, any submission made in the counter affidavit filed by the UPSC, is totally irrelevant to the controversy. As a matter of fact, the impugned order goes undefended.

8. In view of the discussion hereinabove and the fact that the ACRs of the applicant were upgraded by the Competent Authority not once but reiterated reasons twice, the impugned order is not sustainable in law. This OA is accordingly allowed. The impugned order dated 14.08.2015 is hereby quashed. As a consequence of the quashing of the impugned order, the respondent Nos. 1, 3-5 are directed to refer the case of the applicant to the respondent No.1, i.e., UPSC for holding Review DPC within a period of one month. The respondent No.2 shall convene review DPC and accord consideration to the applicant on the basis of his upgraded ACRs for the period 2001-2002 and 2002-2003 for his consideration for grant of NFSG w.e.f. the date his juniors were granted such benefit vide order dated 10.04.2014. Let this entire exercise be completed by the UPSC within three

months from the date of receipt of communication from Res. Nos. 1 and forward its recommendation to them and final order shall be passed within a period of one month thereafter.

9. There shall be no order as to costs.

(Shekhar Agarwal)
Member(A)

(Justice Permod Kohli)
Chairman

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