

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

OA No. 4678/2014

This the 7th day of September, 2015

Hon'ble Shri A.K. Bhardwaj, Member (J)
Hon'ble Shri K.N. Shrivastava, Member(A)

Smt. Reena Tandon,
Aged about 41 years,
W/o Shri Vijay Narain Tandon,
R/o House no. A-19E, DDA Flats,
Munirka.

... Applicant

(By Advocate: Shri A.K. Behera)

Versus

1. Union of India,
Through its Secretary,
Ministry of Defence, Govt. of India, South Block,
New Delhi- 110001.

2. The Controller General
of Defence Accounts, Ulan Batar Road, Palam,
Delhi Cantt. -110010.

3. Secretary, UPSC, Dholpur House,
Shahjahan Road, New Delhi-110011. Respondents

(By Advocate: Shri Rajinder Nischal for R-1 &2
Shri Amit Yadav for Shri Ravinder Aggarwal)

ORDER (ORAL)

By Hon'ble Shri A.K. Bhardwaj, Member (J):

The prayer made in the present OA filed under Section
19 of the Administrative Tribunal Act, 1985 read thus:-

- " a. Call for the records of the case.
- b. Quash and set aside para 8.3. of the minutes of the DPC held on 17.06.2014 and consequently direct the respondents to promote the applicant to the senior Administrative Grade w.e.f. 23.09.2014 i.e the date when her immediate junior was so promoted,
- or
- Declare the ACR/APAR of the applicant for the year -12 as incomplete and non est ACR/APAR and direct the respondents to review the case of the applicant for promotion to SAG by excluding the said ACR/APAR for the year 2011-12 and taking into consideration the ACR of the year 2011-12 and taking into consideration the ACR of the year 2006-07 in its place and on such consideration, if the applicant is found fit, to promote her from 23.09.2014 i.e. the date when her immediate junior was so promoted.
- c. Quash and set aside the promotion order dated 23.09. 2014 to the extent the same excludes the name of the applicant and direct the respondents to include the name of the applicant in the same above the name of Shri K. Balakrishna.
- d. Direct the respondents to give all consequential benefits to the applicant including arrears of pay and allowances.
- e. Any other order or directions, which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case, may kindly be passed in favour of the applicant.
- f. of the present case may be awarded in favour of the applicant."

2. While hearing the matter on 03.9.2015, we noticed that in the column 4 (part-II) of the APAR for the period

from 25.4.2011 to 30.09.2011 there is a mention that, the officer was on leave for about 3 months. In the wake we passed the order dated 3.9.2015 which read thus:-

" During the course of arguments, it could be noticed that out of the report period of 5 months and 5 days, the officer reported upon was on leave for 3 months, as indicated in the APAR. Relevant column of the APAR reads thus:-

"4. Please comment on shortfalls and constraints, if any recorded under Sl.No.4 of Pt.II

The officer reported upon has not stated any shortfalls in achieving the target. The period covered under the report is about five months out of which the officer was on leave for about three months which is not adequate to comment upon the shortfalls on which."

Once during the report period the work of the officer was not actually supervised for more than 3 months, no ACR for the period could be written. Confronted with such factual backdrop, learned proxy counsel for respondent No.3 - UPSC sought opportunity to take instructions from the Commission before making his further submissions in the matter.

At his request, hearing is deferred to 7.9.2015. List as **part heard**.

Let a copy of this Order be given **dasti** to the parties."

3. Today, Shri Amit Yadav for Shri Ravinder Aggarwal learned counsel for UPSC submitted that the DPC assessed the candidature of the applicant for promotion to the post Sr. Administrative Grade in Indian Accounts Service on the basis of dossier/record provided by the department concerned. Indubitably, the total period of APR in question is only 5 months and 5 days. If for 3 months of the report period the applicant was on leave, the left out period would

be only 2 months and 5 days. In terms General Instructions of DOP&T OM No.21011/8/85-Estt.(A) dated 23.09.1985, when in the case of an officer, there is no Reporting Officer having the requisite experience of three months or more during the period of report, the Reviewing Officer himself may initiate the report as a Reporting Officer, provided the Reviewing Officer has been the same for the entire period of report and is in a position to fill in the columns to be filled in by the Reporting Officer.

4. In the present case once the applicant was on leave for 3 months, there could be no occasion even for Reviewing Officer also to certify her work. We are of the considered view that no APAR should have been written for the period. As has been provided in para 18.1 of General Instructions issued by DOPT where DPC has not taken all material facts into consideration, it would be necessary to convene the review DPC. The Para read thus:-

" 18.1. The proceedings of any DPC may be reviewed only if the DPC has not taken all material facts into consideration or if material facts have not been brought to the notice of the DPC or if there have been grave errors in the procedure followed by the DPC. Thus, it may be necessary to convene Review DPCs to rectify certain unintentional mistakes, e.g.,-

- (a) where eligible persons were omitted to be considered ; or
- (b) where the eligible persons were considered by mistake; or

- (c) where the seniority of a person is revised with retrospective effect resulting in a variance of the seniority list placed before the DPC; or
- (d) where some procedural irregularity was committed by a DPC; or
- (e) where adverse remarks in the CRs were toned down or expunged after DPC had considered the case of the officer."

5. Also in the case of **Dev Dutt v. Union of India & Others**, (2008) 8 SCC 725 Hon'ble Supreme Court ruled that when there is change in the ACR (upgradation) of an employee he/she should be reconsidered for promotion. The relevant excerpt of the judgment read thus :-

"43. We are informed that the appellant has already retired from service. However, if his representation for upgradation of the 'good' entry is allowed, he may benefit in his pension and get some arrears. Hence we direct that the 'good' entry of 1993-94 be communicated to the appellant forthwith and he should be permitted to make a representation against the same praying for its upgradation. If the upgradation is allowed, the appellant should be considered forthwith for promotion as Superintending Engineer retrospectively and if he is promoted he will get the benefit of higher pension and the balance of arrears of pay along with 8% per annum interest."

6. In the wake, once there is change in the ACR of the applicant to be taken into account to consider her promotion to SAG, her case need to be reconsidered for such promotion by convening reviewing DPC within a period of 3 months from the date of receipt of a copy of this order. It goes without saying that review DPC would assess the

candidature of the applicant in accordance with the extant rules and instructions on the subject and would taken into consideration the ACR pertaining to the period, immediately preceding the one, ACRs for which were taken into account by original DPC.

(K.N. Shrivastava)
Member (A)

(A.K. Bhardwaj)
Member (J)

/rb/

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

OA No. 1072/2013

MA No.1064/2015

This the 7th day of September, 2015

Hon'ble Shri A.K. Bhardwaj, Member (J)
Hon'ble Shri K.N. Shrivastava, Member(A)

Dilshad Kumar s/o Mr. Narayandas Khatri
Cond. No.21327, P.T. No.47248
Dilshad Garden Depot
New Delhi-95

..Applicant

(By Advocate: Shri N.A.Sabastian)

Versus

Delhi Transport Corporation
Through its Chairman cum Managing Director
Delhi Transport Corporation
IP Estate, New Delhi-02

..Respondent

(By Advocate: Mrs. Avnish Ahlawat)

ORDER (ORAL)

By Hon'ble Shri A.K. Bhardwaj, Member (J):

MA-1069/2015

This MA has been filed by the applicant for restoration of the OA is not opposed by Mrs. Avnish Ahlawat, learned counsel for the respondents, thus allowed. OA is restored to its original number.

OA-1072/2013

The grievance raised by the applicant in this OA is that the pay of his junior in the month of March, 2012 was Rs.13,940/- whereas he was getting Rs.13,330/-. Mrs. Avnish Ahlawat, learned counsel for the respondents pointed out that the applicant has not given the particular of such facts. She also made reference to the calculation of the back wage paid to the applicant in implementation of the judicial pronouncement. In this regard Para 3 of the counter reply filed by the respondents read thus:-

“That in the present case the applicant has accepted the pay fixation order passed by the answering respondent in pursuant to the order passed by the Division Bench of Delhi High Court. He is only seeking fixation of the basic salary at Rs.13,940/- as on 01.01.2012 as paid to his juniors without giving any particulars of the immediate juniors, which is not tenable in the eyes of the laws.”

2. In the wake, let the applicant make detailed representation with all particulars including his junior is getting the salary more than him to the respondents within one week. On receipt of such representation of the applicant, the decision would be taken by Corporation within a period of 3 months thereafter.
3. O.A. is disposed of with the above directions. No costs.

(K.N. Shrivastava)
Member (A)

(A.K. Bhardwaj)
Member (J)

/rb/

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

OA No. 998/2013

This the 7th day of September, 2015

Hon'ble Shri A.K. Bhardwaj, Member (J)
Hon'ble Shri K.N. Shrivastava, Member(A)

Rajiv Kumar, S/o Sh. Om Prakash,
R/o Vill. & Post Office Jhamori,
Distt. Jhajjar (Har.)

..Applicant

(By Advocate: None)

Versus

1. Delhi Transport Corporation,
Through its Chairman,
Govt. of NCT of Delhi,
I.P. Estate, New Delhi.
2. Manager (Personnel),
Delhi Transport Corporation,
Govt. of NCT of Delhi,
IP Estate, New Delhi.

..Respondent

(By Advocate:)

ORDER (ORAL)

By Hon'ble Shri A.K. Bhardwaj, Member (J):

(K.N. Shrivastava)
Member (A)

(A.K. Bhardwaj)
Member (J)

/rb/