

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 4074/2013

Reserved on : 21.10.2016
Pronounced on : 26.10.2016

**HON'BLE MR. P.K. BASU, MEMBER (A)
HON'BLE MR. RAJ VIR SHARMA, MEMBER (J)**

Yogesh Kumar Bangia,
S/o Shri Madan Lal Bangia,
Aged about 47 years,
Working as Joint Director of Training,
Advanced Training Institute for Electronics
and Process Instrumentation,
Niranjanpur, Majra,
Dehradun, Uttarakhand.

.. Applicant

(By Advocate: Shri H.M. Singh)

Versus

1. Union of India,
Through Secretary,
Ministry of Labour and Employment,
DGE&T, Shram Shakti Bhawan,
Rafi Marg,
New Delhi-110001.

2. The Director General of
Employment & Training,
Shram Shakti Bhawan,
Rafi Marg,
New Delhi-110001.

.. Respondents

(By Advocate : Shri Duli Chand)

ORDER

By Hon'ble Mr. P.K. Basu

The short matter in this case is that the applicant, who is the Joint Director of Training, ATIPI, Dehradun, was not considered for promotion as the ACR gradings for the period 01.04.2002 to 31.03.2003, 01.04.2003 to 31.07.2003 and 04.08.2003 to 23.01.2004 were below benchmark and, therefore, DPC did not recommend his case.

2. Learned counsel for the applicant stated that these below benchmark ACRs were never communicated to the applicant and, therefore, in accordance with the judgment of the Hon'ble Supreme Court in **Dev Dutt Vs. Union of India**, (2008) 8 SCC 725, those ACRs need to be ignored as they were never communicated to him.

3. It is stated that in DoPT O.M. dated 13.04.2010, it is clarified that "If an employee is to be considered for promotion in a future DPC and his ACRs prior to the period 2008-2009 which would be reckonable for assessment of his fitness in such future DPCs contain final grading which are below benchmark for his next promotion, before such ACRs are placed before the DPC the concerned employee will be given a copy of the relevant ACR for his representation, if any, within 15 days of such communication. It

may be noted that only below benchmark ACRs for the period relevant to promotion need be sent. There is no need to send below benchmark ACRs of other years.”

4. It is argued that since in the present case the judgment of the Hon’ble Supreme Court in **Dev Dutt** (supra) has been violated as well as the provisions of DoPT O.M. dated 13.04.2010 have been ignored, the applicant should be deemed to have been promoted to the post of Joint Director w.e.f. 02.07.2007, when juniors to him were promoted and he be granted all consequential benefits w.e.f. 02.07.2007 including arrears of pay.

5. The respondents have issued an order dated 21.06.2013 in respect of the applicant by which it has been communicated that the competent authority has decided not to accede to the applicant’s request for retrospective promotion for the post of Joint Director, as sought by him. The applicant is aggrieved by this order and has filed this O.A. with the following prayer:

- “(i) The entire record of this case may be called for;
- (ii) The impugned order Annexure A-1 be quashed/set aside.
- (iii) Allow this application and hold that applicant has been illegally denied promotion to the post of Joint Director on the basis of uncommunicated entry for the period 04.08.2003 to 23.01.2004 w.e.f. 2nd July, 2007.
- (iv) That the downgrading entry for the period 04.08.2003 to 23.01.2004 ought not have been taken into consideration as not communicated while not considering his case for promotion to the post of Joint Director in the DPC of March

2007 and declare that non-consideration of the applicant for promotion to the post of Joint Director is illegal and void.

- (v) To hold that applicant is deemed to have been promoted to the post of Joint Director w.e.f. 02.07.2007 when juniors to him were promoted and he entitled to all consequential benefits w.e.f. 02.07.2007 including arrears of pay.
- (vi) To direct the respondents to pay all arrears of pay from 02.07.2007 till October 2012 with interest.
- (vii) To hold communication dated 14.08.2011 regarding downgrading of entry for the period 04.08.2003 to 23.01.2004 is illegal as it is served after 7 years and non-consideration of the representation dated 07.09.2011 for more than 1½ years is also illegal.
- (viii) Any other appropriate order/direction which this Hon'ble Tribunal may deem fit in the peculiar facts and circumstances of the case.
- (ix) The costs of the application may also be awarded in favour of the applicant."

6. The respondents in their reply, as is also evident from their order dated 21.06.2013, have taken a stand that communication of ACR gradings prior to 2008-09 in case of below benchmark is not necessary and only adverse gradings were required to be communicated, and since the applicant's gradings were 'good', 'good' and 'average' for the three periods stated above and since these were not adverse, they were not communicated.

7. We have considered the rival contentions and also considered the relevant circulars of DoPT and judgment of the Hon'ble Supreme Court in **Dev Dutt** (supra) and **Abhijit Ghosh Dastidar Vs. Union of India and others**, (2009) 16 SCC 146. The Hon'ble

High Court of Delhi in WPC No.5042/2002 and connected writs vide judgment dated 31.05.2012 (**UOI & anr. vs. V.S. Arora & ors.**) has elaborated as follows:

“24. Therefore, the position that emerges is that the decision in **Abhijit Ghosh Dastidar** (supra) holds the field. Now, what is it that **Abhijit Ghosh Dastidar** (supra) decides? It has, in the first instance, while affirming **Dev Dutt** (supra) concluded that ‘non-communication of an ACR is violative of the constitutional rights of a government servant/employee. In the second instance, it has stated that such below benchmark ACRs ought not to be taken into consideration while the question of promotion of a particular government servant is in contemplation. Now, that leaves us with the further question as to what is to be done after we ignore/do not consider the below benchmark ACRs. In this regard, we have clear guidelines contained in Chapter 54 of the Manual on Establishment and Administration for Central Government Offices, which have been issued by the Government of India for DPCs (G.I., Dept.of Per.& Trg., OM No.22011/5/86-Estt. (d), dated the 10th April, 1989 as amended/substituted vide Dept. of Per. & Trg., OM No. 22011/5/98-Estt. (d), dated the 6th October, 2000).

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25. From the guidelines, it is clear that the DPC should consider the confidential reports for equal number of years in respect of all the employees considered for promotion subject to (c) mentioned above. The latter sub-paragraph (c) makes it clear that when one or more confidential reports have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if, in any case, even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per sub-paragraph (b) above. If this is also not possible, all the available CRs should be taken into account. We are of the view that the same would apply in the case of non-communicated below benchmark ACRs. Such ACRs would be in the same position as those CRs which have not been written or which are not available for any reason. Thus, it is clear that below benchmark

ACRs, which have not been communicated cannot be considered by the DPC and the DPC is then to follow the same procedure as prescribed in paragraph 6.2.1 (c), as indicated above”.

8. In view of the above judgments, the respondents are directed to place the matter before a Review DPC ignoring the below benchmark ACRs of the applicant for the period 01.04.2002 to 31.03.2003, 01.04.2003 to 31.07.2003 and 04.08.2003 to 23.01.2004 for consideration of his promotion to the post of Joint Director in accordance with prevalent rules.

9. With the aforesaid direction, the O.A. stands disposed of. No order as to costs.

(Raj Vir Sharma)
Member (J)

(P.K. Basu)
Member (A)

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