

**Central Administrative Tribunal
Principal Bench**

OA No. 4160/2013

New Delhi this the 13th day of October, 2015

Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

Shri G.Satyanaryana (EC: 3402)
S/o Late Sh. G. Krishna Murthy,
Aged about 51 years,
R/o 21-10/3-40, Ist Lane, Srinagar Colony,
Vijayawada and working as Asstt. Manager
(Finance) under the respondents, presently
Posted at Hyderabad -Applicant

(By Advocate: Shri S.S. Tiwari)

VERSUS

1. National Buildings Construction Corporation Ltd.
Through its Chairman-cum-Managing Director,
NBCC Bhavan, Lodhi Road, New Delhi-110003
2. Executive Director (Finance)
NBCC Ltd. NBCC Bhavan,
Lodhi Road, New Delhi-110003
3. General Manager (HRM)
HRM Division,
NBCC Ltd. NBCC Bhavan,
Lodhi Road, New Delhi-110003 -Respondents

(By Advocate: Shri Satish Kumar)

ORDER (Oral)

By Mr. A.K. Bhardwaj, Member (J):

When the applicant was not empanelled for his promotion to the post of Deputy Manager (Finance) in the year 2010-11, he filed the present OA praying therein:-

- “(i) Set aside & quash the impugned ACR’s for the years 2008-09, 2009-10 as well as 2010-11.
- (ii) Direct the respondents to convene a review DPC for the post of Dy. Manager (Finance) for the year 2010-11 and promote the applicant in case he is found “fit” from the due date.
- (iii) Direct the respondents give the applicant all consequential benefits following from grant of relief (i to ii).
- (iv) Award costs and
- (v) Pass any other order/direction as may be deemed fit just & proper in the facts and circumstances of the case.”

2. The salient submission putforth by the learned counsel for the applicant is that the ACRs of the applicant for the year 2008-09, 2009-10 and 2010-11 being below benchmark ought to have been communicated him and only after consideration of his representation against the said ACRs, he could have been considered for promotion by DPC.

3. On the other hand, learned counsel for the respondents submitted that the ACRs were made available to the applicant and his representation against the same has been considered and rejected.

4. We heard the learned counsels for the parties and perused the record.

5. In terms of law declared by the Hon'ble Supreme Court in the case of **Dev Dutt Vs. Union of India & Ors**, (2008) 8 SCC 725, the ACRs with the grading below benchmark need to be treated as adverse and have to be communicated to an employee and if on representation made against the ACR, the grading is improved, the employee need to be reconsidered for his promotion. In the present case apparently, after being not empanelled for promotion to the post of Deputy Manager (Finance), the applicant got the ACRs under Right to Information Act, 2005 and the representation against the same was rejected. Nevertheless, we find that in terms of OM dated 14.05.2009 as well as OM dated 13.04.2010, the representations against the grading in the ACR need to be decided by way of a detailed, reasoned and speaking order. The OM dated 14.05.2009 read thus:-

“1. The existing provisions in regard to preparation and maintenance of Annual Confidential Reports inter alia provide that only adverse remarks should be communicated to the officer reported upon for representation, if any. The Supreme Court has held in their judgment, dated 12.05.2008 in the case of Dev Dutt v. Union of India (Civil Appeal No.7631 of 2002) that the object of writing the confidential report and making entries is to give an opportunity to the public servant to improve the performance. The 2nd Administrative Reforms Commission in their 10th Report has also recommended that the performance appraisal system for all services be made more consultative and transparent on the lines of the PAR of the All India Services.

2. Keeping in view the above position, the matter regarding communication of entries in the ACRs in the case of civil services under the Government of India has been further reviewed and the undersigned is directed to convey the following decisions of the Government-

- (i) The existing nomenclature of the Annual Confidential Report will be modified as Annual Performance Assessment Report (APAR).
- (ii) The full APAR including the overall grade and assessment of integrity shall be communicated to the concerned officer after the Report is complete with the remarks of the Reviewing Officer and the Accepting Authority wherever such system is in vogue. Where Government servant has only one supervisory level above him as in the case of personal staff attached to officers, such communication shall be made after the reporting officer has completed the performance assessment,
- (iii) The Section entrusted with the maintenance of APARs after its receipt shall disclose the same to the officer reported upon.
- (iv) The concerned officer shall be given the opportunity to make any representation against the entries and the final grading given in the Report within a period of fifteen days from the date of receipt of the entries in the APAR. The representation shall be restricted to the specific factual observation contained in the report leading to assessment of the officer in terms of attributes work output, etc. While communicating the entries, it shall be made clear that in case no representation is received within the fifteen days, it shall be deemed that he/she has no representation to make. If the concerned APAR Section does not receive any information from the

concerned officer on or before fifteen days from the date of disclosure, the APAR will be treated as final.

- (v) The new system of communicating the entries in the APAR shall be made applicable prospectively only with effect from the Reporting Period 2008-09 which is to be initiated after 1st April, 2009.
- (vi) The Competent Authority for considering adverse remarks under the existing instructions may consider the representation, if necessary, in consultation with the reporting and/or reviewing officer and shall decide the matter objectively based on the material placed before him within a period of thirty days from the date of receipt of the representation.
- (vii) The Competent Authority after due consideration may reject the representation or may accept and modify the APAR accordingly. The decision of the Competent Authority and the final grading shall be communicated to the officer reported upon within fifteen days of receipt of the decision of the competent authority by the concerned APAR Section.

3. All Ministries/Departments are requested to bring to the notice of all the offices under them for strict implementation of the above instructions.”

The OM dated 13.04.2010 read thus:-

“Below bench-mark gradings in ACRs prior to the reporting period 2008-2009 and objective consideration of representation by the Competent Authority against remarks in the APAR or for upgradation of the final grading.- Prior to the reporting period 2008-09, only the adverse remarks

in the ACRs had to be communicated to the concerned officer for representation, if any, to be considered by the Competent Authority. The question of treating the grading in the ACR which is below the bench-mark for next promotion has been considered in this Department and it has been decided that if an employee is to be considered for promotion in a future DPC and his ACRs prior to the period 2008-09 which would be reckonable for assessment of his fitness in such future DPCs contain final grading which are the below the bench-mark 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 bench-mark ACR below bench-mark ACRs of other year.

2. As per existing instructions, representations against the remarks or for upgradation of the final grading given in the APAR (previously known as ACR) should be examined by the Competent Authority in consultation, if necessary, with the Reporting and the Reviewing Officer, if any. While considering the representation, the Competent Authority decides the matter objectively in a quasi-judicial manner on the basis of material placed before it. This would imply that the Competent Authority shall take into account the contentions of the officer who has represented against the particular remarks/grading in the APAR and the views of the Reporting and Reviewing Officer if they are still in service on the points raised in the representation vis-à-vis the remarks/gradings given by the in the APAR. The UPSC has informed this Department that the Commission has observed that while deciding such representations, the competent authorities sometimes do not take into account the views of Reporting/Reviewing Officers if they are still in service. The Commission has further observed that in a majority of such cases, the

Competent Authority does not give specific reasons for upgrading the below bench-mark ACR/APAR grading at par with the bench-mark for next promotion.”

6. In the wake, the OA is disposed of with directions to the respondents to decide the representation made by the applicant against the grading in the ACR by way of detailed, reasoned and speaking order and if on such consideration, there is improvement in the grading, he would be reconsidered for his promotion to the post in question. While considering the representation of the applicant, the respondents will also take into account the plea raised by the applicant in the present OA. No costs.

(Dr. B.K. Sinha)
Member (A)

(A.K. Bhardwaj)
Member (J)

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