

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA No. 4184/2011

Order Reserved on: 18.01.2016
Pronounced on: 16.02.2016

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

Smt. Anjana
W/o Shri Ghanshyam Dass
R/o JC/34-A, Hari Enclave,
Hari Nagar,
New Delhi-110064.

- Applicant

(By Advocate: Mr. Nilansh Gaur)

Vs.

1. Union of India
Through Secretary (Defence),
Ministry of Defence,
South Block, New Delhi.
2. The Secretary,
Ministry of Personnel, PG and Pensions,
Department of Personnel & Training,
Lok Nayak Bhawan,
New Delhi-110003.
3. UPSC
Through Secretary,
Dholpur House,
Shahjahan Road,
New Delhi.
4. Central Electricity Authority,
Sewa Bhawan, R.K.Puram,
New Delhi-110066.

5. Sh. Ramesh Chandra Nakul,
M-64, Swati Apartments,
I.P.Extension, Delhi-110092.

- Respondents

(By Advocate: Ms. Harvinder Oberoi, Ms. Bindra Rana and
Ms. Manashi Pathak)

ORDER

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

The short issue involved in the instant OA filed under Section 19 of the AT Act, 1985 is that whether the proceedings of DPC can be interfered with on grounds of not having followed the Government instructions.

2. The case of the applicant in brief, as argued by the learned counsel, is that she belongs to CSSS Cadre appointed in the year 1977, and two of her ACRs for the year 2006-07 and 2007-08 containing below bench mark grading were communicated to her. She represented against the offending ACRs and the same were upgraded by the competent authority vide communication dated 16.11.2010. Thereafter, she was considered by the DPC on 25.03.2011 and promoted to the post of Sr. PPS on ad hoc basis by considering her last five ACRs including the two upgraded ACRs. However, another DPC held on 25.10.2011 for regularisation of the applicant along with others found her unfit and the same was communicated vide order dated 16.11.2011. The applicant filed representation against this which was rejected. The applicant, in the

instant OA, is challenging the act of her non-promotion vide the communication dated 16.11.2011 and direction of respondent no.2 for her reversion vide communication dated 09.11.2011. She has been maintained on the post of Sr. PPS by the Tribunal vide its order dated 23.11.2011 in this case.

3. The ground adopted by the learned counsel for the applicant, during the course of argument, is that her ACRs were upgraded and she was considered for promotion to the post of Sr. PPS and was recommended for the same vide the DPC held on 25.03.2011 on ad hoc basis. Subsequently, she was considered for regular promotion but her candidature came to be rejected though there was no change in the status of the ACRs and the DPC had not stated any ground for not recommending her case for promotion. Learned counsel for the applicant has drawn our attention to Para 7.2 of the proceedings of the DPC and has stated that the DPC did not state any reasons for differing with the findings of the last DPC dated 25.03.2011 and upgraded two ACRs as only 'Good'. Thereby, the DPC has violated Government instructions as contained in DOP&T OM dated 09.05.2014 that the DPC should substantiate its assessment by giving justifiable and sustainable reasons including the cases where the assessment of the DPC is different from the grading in APAR.

4. The applicant has fervently prayed for the following reliefs:

"i) Call for the entire records of the regular DPC held on 25.10.2011 conducted for the post of Sr.PPS; and

- ii) Quash and set aside the promotion order No 2/1/2011-CS-II(A) dated 16.11.2011 (Annexure A-1) in respect of the applicants; and
- iii) Quash and set aside the regular DPC proceedings held on 25.10.2011 for the post of Sr. PPS in respect of the applicant; and
- iv) Direct the official respondents that the all the gradings in the applicant's ACR for the period 2006-07 and 2007-08 are to be treated as 'Very Good' as the same has already been upgraded to 'Very Good' by the competent authority; and
- v) Direct the respondents to conduct the review DPC in respect of the applicant by treating all the gradings in the ACRs for the period 2006-07 and 2007-08 as 'Very Good' or ignoring the said ACRs; and
- vi) To award exemplary costs; and
- vii) To pass any other order as this Hon'ble Tribunal deem fit in the interest of justice."

5. Respondents No.1, 2 & 4 have filed a joint counter affidavit while respondent no.3 has filed a separate but short reply contesting the claim of the applicant submitting that the applicant was well aware that her ad hoc promotion was only up to 30.11.2011 and was subsequently extended. As per the Government OM dated 08.09.1998 supported by the subsequent OM dated 16.06.2000, the DPC should only grade a candidate as 'fit' or 'unfit' and assessment has been done accordingly.

6. While accepting the factual matrix of the case, the respondents have relied upon decided case of **UPSC vs. K.Rajaiah**, (2005) 10 SCC 15, to state that the Selection Committee is free to make its own independent assessment including re-grading of ACRs after having

gone through thoroughly which may vary from the gradation given sometimes. The 'Very Good' grading should flow from various parameters given in the report and that the gradings are also not dependent and the Selection Committee is not dependent on the gradings given by the individual authorities in the ACRs. The learned counsel for the respondents no.1, 2 & 4 strongly submitted that the DPC could also differ with previous DPC. In the instant case, the DPC found that though upgradation of ACRs had been done, but no reasons had been stated for upgrading the same. This has been supported by the learned counsel for respondent no.3 and has submitted on the basis of **Nutan Arvind vs. Union of India & another**, (1996) 2 SCC 488, that once a high level committee had considered the respective merits of the candidates, assessed the grading, and considered their cases for promotion, this court cannot sit over the assessment made by the DPC as an appellate authority. They have also relied upon the decision in **UPSC vs. ILL Dev & others**, AIR 1988 SC 1069 to contend that it is the function of the Selection Committee to categorise a candidate in the light of the relevant record and what norms to apply in making the assessment are exclusively the function of the Selection Committee. They have also relied on **Dalpat Ahbasaheb Solanke vs. B.S.Mahajan**, AIR 1990 SC 434, which provides that it is not the function of the Court/Tribunal to hear appeals over the decision of the Selection Committees and to scrutinize the relative merits of the candidates.

7. In **Anil Katiyar vs. Union of India & others**, 1997 (1) SCC 280, the Hon'ble Supreme Court held that the Courts/Tribunals could not sit over the selection made by the DPC.

8. We have carefully gone through the pleadings and such documents as have been submitted by the applicant. We have also considered the oral submissions made by the learned counsel appearing for the contesting parties. The sole issue for consideration in the instant case is whether the DPC dated 25.10.2011 had erred in not providing the reasons in this behalf?

9. In this regard, for better clarity, we start by reproducing the relevant paras 6, 7.1 and 7.2 of the DPC dated 25.10.2011:

“6. The Committee were apprised that taking into account the instructions guidlings, issued by DOP&T, as detailed above, the Commission in exercise of their constitutional functions as envisaged in Article 320 of the Constitution, took a conscious decision that an officer attaining at least 4 bench mark gradings out of the 5 ACRs, as prescribed by the Government of India in Department of Personnel & Training O.M. No.22011/9/98-Estt.(D) dated 08.09.1998, read with subsequent O.M. of even number dated 16.06.2000, 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.

7.1 The Committee accordingly assessed the character rolls of the eligible officers.

7.2 The Committee noted that the ACRs for the years 2006-07 and 2007-08 in respect of Smt. Anjana were below bench mark which were conveyed to the offier, in terms of the DOP&T O.M. 21911/1/2010-Estt.-A, dated 13.04.2010. The Committee also noted that the representation of Smt. Anjana had been considered by the competent authority and the said ACRs had been upgraded to “Very Good”. The DPC, however, went

through each individual entry in the said ACRs as also the orders of upgradation of the ACRs and assessed her as "Good" for the years 2006-07 and 2007-08."

10. It is an admitted fact that prior to 08.09.1998, DPCs were being conducted in terms of OM dated 10.04.1989. Para 5 of the said OM clearly provides that the DPC was free to decide its own method and procedure for objective assessment of the suitability of the candidates. Para 6.2.2 provides that each officer should be given a grading – (i) Outstanding, (ii) Very Good, (iii) Good, (iv) Average and (v) Unfit.

11. This has been subsequently changed by providing the grading only as 'fit' or 'unfit' vide OM dated 08.02.2002. The benchmark for promotion had been set at 'Very Good' for selection post vide OM dated 10.04.1989 supplemented by OMs dated 27.03.1997 and 08.02.2002 in respect of the posts of Principal Secretary. Para 6.2.1 of the OM dated 10.04.1989 reads thus:

" 6.2.1. Confidential Rolls are the basic inputs on the basis of which assessment is to be made by each DPC. The evaluation of CRs should be fair, just and non-discriminatory. Hence –

(a) The DPC should consider CRs for equal number of years in respect of all officers considered for promotion subject to (c) below.

(b) The DPC should assess the suitability of the officers for promotion on the basis of their service record and with particular reference to the CRs for 5 preceding years. However, more than 5 years, the DPC should see the record with particular reference to the CRs for the years equal to the required qualifying service. (If more than one CR has been written for a particular year, all the CRs for the

relevant year shall be considered together as the CR for one year).

(c) Where one or more CRs 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 (b) above. If this is also not possible, all the available CRs should be taken into account.

(d) Where an officer is officiating in the next higher grade and has earned CRs in that grade, his CRs in that grade, his CRs in that grade may be considered by the DPC in order to assess his work, conduct and performance, but no extra weightage may be given merely on the ground that he has been officiating in the higher grade.

(e) The DPC should not be guided merely by the overall grading, if any, that may be recorded in the CRs but should make its own assessment on the basis of the entries in the CRs, because it has been noticed that some times the overall grading in a CR may be inconsistent with the grading under various parameters or attributes.

(f) If the Reviewing authority or the Accepting Authority as the case may be has over-ruled the Reporting Officer or the Reviewing authority as the case may be, the remarks of the latter authority should be taken as the final remarks for the purposes of assessment provided it is apparent from the relevant entries that the higher authority has come to a different assessment consciously after due application of mind. If the remarks of the Reporting Officer, Reviewing authority and Accepting authority are complementary of over-ruling the other, then the remarks should be read together and the final assessment made by the DPC.”

12. Now, we advert to the issue in hand that the grading of the ACRs for the years 2006-07 and 2007-08 are upgraded. Admittedly, the upgradation of two ACRs of the applicant were made on the basis

of her representation dated 01.10.2010. The relevant order dated 16.11.2010 reads as follows:

“Attention of Smt. Anjana, PPS, CEA is invited to her representation No.CEA/PLG/DMLF/23/7/2010/1099 dated 01.10.2010 on the subject cited above. The competent authority, after considering various points raised in the representation submitted by Smt. Anjana against the below bench mark grading in the ACRs for 2006-07 and 2007-08, has acceded to her request for up-gradation of the grading. Accordingly, the grading in the ACRs for the years 2006-07 and 2007-08 of Smt. Anjana has been revised to “Very Good”.”

13. We find that the Para 5 of the OM dated 09.05.2014 provides that *“The DPCs should substantiate its assessment by giving justifiable and sustainable reasons including the cases where the assessment of the DPC is different from the grading in APAR (original or amended after representation by the Government servant)”*. We find that this OM was not in force when the DPC dated 25.10.2011 for considering regular promotion of the applicant had taken place. It is an axiomatically accepted principle of law that every circular will take prospective effect and not retrospective effect.

14. We are further swayed by the fact that explanation of the DPC in para 7.2 of its meeting held on 25.10.2011 [page 63 of the paper book] had provided the reason that though the grading of the DPC had been revised from “Good” to “Very Good” the individual entries were left unaltered and they did not justify the revision. They had been adduced to an overall grading of “Good”.

15. Here, we are of the view that one has to keep in mind that the administrative orders need not be lengthy like the judicial order or else and do not have to go into details. Another way of writing such an order is that the same would have to take each parameter and to explain how it justifies the grading of “Good” and not “Very Good”. However, where a DPC has to indulge in this kind of exercise, it will not be able to complete its items of the work. It is a well settled law that even an administrative order has to be reasoned though not on priority and detailed one as has been upheld in ***M.P. Special Police Establishment vs. State of Madhya Pradesh and others***, AIR 2005 SC 325. In ***Sudhir Kumar Gupta vs. AIIMS and others*** [OA No. 2100/2014 decided on 04.03.2015], this Tribunal has required that administrative orders should be rational. Besides, we have also taken into consideration the arguments regarding limited role of courts. The superior courts have time in and time out held that courts should not try to step into the arena of DPC being a superior DPC. In **K.Rajaiah** (supra), it clearly emerges that courts are not to interfere as superior DPC or as appellate authorities. Their role is confined to see whether correct procedure has been followed or not or whether there is some illegality or irrationality involved in the process. While not denying the authority/power of courts/tribunals to interfere with the decisions of the DPC where any of the above situations are attracted, it equally holds good that the scope of interference is in a narrow campas and courts/tribunals are certainly

not to assume the role of superior DPC. The legal issue is answered accordingly.

16. In totality of facts and circumstances of the case and in view of our above discussion, we are of the considered opinion that we cannot interfere with the impugned order. The OA is accordingly dismissed with no order as to costs.

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

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(A.K. Bhardwaj)
Member (J)