

**Central Administrative Tribunal
Principal Bench**

OA No.3197/2013

New Delhi, this the 11th day of October, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

B.K.L. Srivastava, Age 60 years
S/o Sh. Amar Lal Srivastava
R/o 771, Sector-28
Faridabad, Haryana.Applicant

(By Advocate: Sh. Sachin Chauhan)

Versus

1. Union of India through the Secretary
Ministry of Corporate Affairs
'A' Wing, Shastri Bhawan
New Delhi-110001.
2. The Under Secretary, Govt. of India
Ministry of Corporate Affairs
5th Floor, 'A' Wing, Shastri Bhawan
New Delhi-110001.
3. The Secretary, Ministry of Personnel
Public Grievance & Pensions
North Block, New Delhi-1
4. Sh. Arvind Shukla, JAG
Official Liquidator, Chennai
Through the Secretary
Ministry of Corporate Affairs
'A' Wing, Shastri Bhawan
New Delhi-110001.
5. Sh. M. Chandnamuthu, JAG
Through the Secretary
Ministry of Corporate Affairs
'A' Wing, Shastri Bhawan
New Delhi-110001.

6. Sh. D.P. Ojha, JAG
Official Liquidator, Chandigarh
The Secretary
Ministry of Corporate Affairs
'A' Wing, Shastri Bhawan
New Delhi-110001.
7. Sh. B. Mohanty, JAG
Through the Secretary
Ministry of Corporate Affairs
'A' Wing, Shastri Bhawan
New Delhi-110001.
8. Union Public Service Commission
Through its Secretary
Shajahan Road, Dholpur House
New Delhi-110001. ...Respondents

(By Advocates: Shri R.V. Sinha and Shri N.K. Aggarwal)

ORDER (ORAL)

Justice L. Narasimha Reddy:-

The applicant was appointed to Grade-IV of the Indian Corporate Law Service in the year 1989. He was promoted to Grade-III in the Senior Time Scale in the year 2000. The next promotion was to the Junior Administrative Grade for which the DPC met in the year 2009 for considering the case of the officers. Though the case of the applicant was considered, he was found to be unfit on account of the gradations in the ACRs for the preceding three of the five years. Accordingly, he was denied

promotion. Thereafter, the DPC met in the year 2011 and the applicant was promoted to the Junior Administrative Grade w.e.f. 09.10.2011.

3. The Govt. issued Office Memorandum dated 13.04.2010 directing that wherever there exist any adverse entries in the ACR of any officer, they shall be communicated and the employee must be permitted to make a representation. In view of this, the concerned officer of the respondent organization addressed a letter dated 02.07.2010 communicating the adverse entries for the period 2003-2004, 2004-2005 and 2005-2006 to the applicant, leaving it open to him to make representation. On receipt of the letter the applicant submitted representation on 20.07.2010. On consideration of the same, the respondents passed an order dated 08.11.2010 upgrading the ACRs to "Very Good".

4. In view of this development, the applicant submitted a representation with a request to convene the review DPC and if necessary to upgrade the ACR for 2002-2003 also. The respondents passed

an order dated 13.03.2012 rejecting the request of the applicant. Hence this OA.

5. The applicant contends that he was denied promotion by the DPC, which met in 2009 only because of the adverse entries in the ACRs of the years 2003-2004, 2004-2005 and 2005-2006 which were communicated to him and once they have been upgraded, he is entitled to be promoted with effect from the date his junior was promoted. Alternatively, he contends that in case the ACRs for the period 2002-2003 was relevant, it was required to be upgraded in view of the law as it exists now.

6. The respondents filed two separate counter affidavits. According to them, the OA is barred by limitation and that the applicant cannot seek relief at this stage. It is also stated that once the applicant has been promoted in the year 2011, he cannot have any genuine grievance and even if the upgraded ACRs are taken into account, no benefit would accrue to him.

7. Heard Shri Sachin Chauhan, learned counsel for the applicant and Shri R.V. Sinha and Shri N.K. Aggarwal, learned counsel for the respondents.

8. It is not in dispute that the case of the applicant was considered for promotion to the post of JAG in the year 2009. The ACRs for 5 years preceding the date of DPC became relevant. On finding that the ACRs for the relevant period were not up to the mark, the DPC did not recommend the case of the applicant. However, at a subsequent date, the DPC met in the year 2011, which find the applicant fit and accordingly he was appointed w.e.f. 19.05.2011.

9. As required under the DoP&T's Office Memorandum dated 13.04.2010, ACRs for three years, referred to above have been communicated to the applicant and on a representation submitted by him, they were upgraded to the level of "Very Good", through Office Order dated 02.07.2010. It appears that the respondents have chosen to communicate the ACRs for the three years, referred to above, because they came in the way for promotion of the applicant. Once they have been upgraded, the

applicant is entitled to be put back to the appropriate place, namely, with effect from the date from which his junior was considered and promoted on the basis of the recommendations of the DPC which met in 2009.

10. May be, due to lack of full information of the reasons that came in the way of his promotion to the post in the year 2009, the applicant made a prayer for convening of Review DPC. Similarly, a prayer is also made for the upgradation of ACRs for 2002-2003.

11. We are of the view that once the applicant has been promoted in the year 2011, and the impediment for earlier promotion was removed, the necessity of convening a Review DPC does not exist and the question would be only of making the promotion with effect from the date from which his junior was promoted. Further, the respondents have not chosen to communicate the ACRs of 2002-2003 either because there was nothing adverse against him or because it was not relevant.

12. Be that as it may, in case the ACRs of the year 2002-2003 is of any relevance for the promotion of the applicant, with effect from the date on which his junior was promoted, the procedure for upgradation of the same needs to be taken up. It is brought to our notice that in the recent past the Hon'ble Supreme Court in ***Sukhdev Singh vs. Union of India and Ors.***, held that in cases of this nature, the process for upgradation may not be possible and the only course open is to take the ACRs of the year, preceding the same, into account.

13. We, therefore, dispose of the OA directing that:

- (a) In case the applicant was denied promotion in the year 2009 because of his ACRs for the year 2003-2004, 2004-2005 and 2005-2006, were not up to the mark, he shall be promoted with effect from the date on which his junior was promoted in view of the upgradation of ACRs;
- (b) If on the other hand, ACRs for the year 2002-2003 became relevant for this purpose, the exercise indicated by the Hon'ble Supreme Court ***Sukhdev Singh's*** case (supra) shall

be taken up and depending on the result thereof, the benefit shall be extended to the applicant.

This exercise shall be completed within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Aradhana Johri)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

/vb/