

**Corrected
Central Administrative Tribunal
Principal Bench**

OA No.60/2014

New Delhi, this the 18th day of September, 2018

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

Sh. R.K. Nafria, R/o H.No. 1485
Sec-31, Housing Board Colony
Gurgaon, Haryana. ...Applicant

(By Advocate: Shri M.K. Bhardwaj)

Versus

UOI and Ors.

1. The Secretary, M/o Urban Development
Nirman Bhawan
New Delhi.
2. The Director General of Works
CPWD, M/o Urban Development
Nirman Bhawan, New Delhi. ..Respondents

(By Advocate: Shri R.K. Sharma)

ORDER (ORAL)

Justice L. Narasimha Reddy:-

The applicant is an employee of Central Public Works Department. In the context of his promotion to the post of Superintending Engineer on regular basis, two years ACRs i.e. 01.06.2004 to 31.03.2005 and

25.04.2005 to 01.03.2006 came in the way. He filed OA No.1315/2011 claiming the relief in the form of a declaration to the effect that the gradings for those two years need to be ignored and the respondents be directed to convene a review DPC for consideration of his case, ignoring the gradation in relation to two years. The OA was allowed through order dated 03.09.2012 and it was directed that the ACRs for two years, referred to above, be ignored and a review DPC be conducted.

2. In compliance with the order of the Tribunal, the respondent convened a review DPC. Once the ACRs for two years were ignored, it became necessary to go down below to take into account, the ACRs for 5 years. The respondents communicated the ACRs for the years 2002-2003 and 2003-2004 to the applicant, since they were below the bench mark. The applicant was permitted to make a representation. Such representation was made and on consideration of the same, the competent authority passed an order dated 19.09.2013 refusing to interfere with the gradation.

3. The DPC took into account the ACRs of five years preceding the year of consideration, excluding those of the years 2004-2005 and 2005-2006. Since the gradation in the ACRs were below the Bench mark, the DPC did not recommend the case of the applicant for promotion. A consequential order dated 21.10.2013 was passed and was communicated to the applicant.

4. This OA is filed challenging the orders dated 21.10.2013 and 19.03.2013. Consequential reliefs in the form of a direction to the respondents to promote him to the post of CE in situ basis with all consequential benefits is also prayed for.

5. The applicant contends that once this Tribunal directed the respondents to ignore the ACR for the years 2004-2005 and 2005-2006, there was absolutely no basis for them to go below and to take into account the ACRs of the years 2002-2003 and 2003-2004. It is also stated that reasons assigned by the competent authority in refusing to upgrade the ACRs of those two years are unsustainable in law and that the procedure adopted by the DPC, which culminated in the order dated 21.10.2013, is contrary to law.

6. The respondents filed a detailed counter affidavits. It is stated that the ACRs of an incumbent for a period of five years, preceding the year of consideration need to be taken into account and once the ACRs for the years 2004-2005 were directed to be ignored by the Tribunal at the instance of the applicant, necessity arose to go down below to pick up the ACRs of two years and in the process, the ACRs for the years 2002-2003 and 2003-2004 were communicated to the applicant. It is also stated that the competent authority has examined the matter in detail and passed the orders dated 19.09.2013. The order dated 21.10.2013 is said to be the result of the consideration of the case as directed by the Tribunal.

7. We heard Shri M.K. Bhardwaj, learned counsel for the applicant and Shri R.K. Sharma, learned counsel for the respondents in detail and perused the records.

8. The case of the applicant for promotion to the post of Superintending Engineer on regular basis was considered with reference to the relevant year. The ACRs for a period of five years preceding that year were required to be taken into account. In terms of the

office memorandum, ACRs for the years 2004-2005 and 2005-2006 were communicated to the applicant. At that stage, the applicant filed OA No.1315/2011 with a prayer to direct the respondents to ignore the ACRs for those two years. Through a detailed Order dated 03.09.2012, the Tribunal allowed the OA and directed the respondents to ignore the ACRs for those two years and to convene a review DPC for consideration of the case of the applicant.

9. Once the ACRs for the years 2004-2005 and 2005-2006 were to be ignored necessity arose for the department to go below to find out the ACRs of two more years and that turned out to be the ACRs for the years 2002-2003 and 2003-2004. There again the assessment was below bench mark. As required under law, the applicant was furnished the ACRs and a representation submitted by him was considered and a detailed order dated 19.09.2013 was passed that is one of the orders which is challenged in this OA.

10. We have carefully gone through the order dated 19.09.2013. It must be said to the credit of the concerned officer that he has undertaken extensive

discussion on various aspects, though what was before him was just a request for upgradation of the ACRs. Cogent reasons were assigned as to how the gradation as contained in the ACRs was justified and how he is not convinced to interfere with the same. The discretion of this Tribunal, in the context of interference with the ACRs is very limited. Reference in this context may be made to the judgment of the Hon'ble Delhi High Court in WP(C) No.966/2010 dated 28.10.2010. Extensive discussion was undertaken, on the basis of the decided cases and it was held that the courts should not interfere with the ACRs, unless extraordinary circumstances exist.

11. Here itself we may mention that the applicant did not present the correct picture before the Tribunal when he filed OA No.1315/2011. In the OA he presented a tabular form stating to be the summary of the ACR gradings for about 10 years. For the years 2002-2003 and 2003-2004, he mentioned the ACRs as 'Very Good'. There is absolutely no basis for that and it was a clear case of mis-representation. The table was in fact extracted by the Tribunal in its order dated 03.09.2012 in entirety and observation was made to

the effect that when the performance of the applicant was so outstanding, it is just not understandable as to how it can be different for the year 2004-2005 and 2005-2006. But for the mis-representation, the direction issued by the Tribunal would have been different altogether.

12. Once it has emerged that the ACRs for the two years out of five years preceding the date of consideration is below bench mark, there is no way that the applicant could have been promoted that too on notional basis. The applicant has since retired from service. We do not find any basis to interfere with the orders challenged in the OA.

13. The OA is accordingly dismissed. There shall be no order as to costs.

(Aradhana Johri) (Justice L. Narasimha Reddy)
Member(A) Chairman

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