

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

O.A No. 2018/2013

New Delhi, this the 2nd day of August, 2018

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

Akshya Kumar Panda,
S/o. Adaita Chavan Panda,
Aged 56 years,
R/o. DI-190,
Satya Marg,
Chanakyapuri,
New Delhi – 110 021.

....Applicant

(Applicant in person)

Versus

1. Union of India,
Through Secretary,
Department of Economic Affairs,
Ministry of Finance,
North Block,
New Delhi – 110 001.
2. Union Public Service Commission
Through its Secretary,
UPSC, Dholpur House,
Shahjahan Road,
New Delhi – 110 011.
3. Union of India,
Through CEO,
Niti Aayog,
New Delhi – 110 001.

...Respondents

(By Advocate : Mr. Ashish Nischal with Mr. Rajinder Nischal for R-1 & 3, Mr. Naresh Kaushik with Mr. Devik Singh for R-2)

ORDER (O R A L)**Justice L. Narasimha Reddy, Chairman :**

The applicant joined the Indian Economic Services (IES) in the year 1986 as Assistant Director through process of direct recruitment. Thereafter, he was promoted as Deputy Director in the year 1991. The next promotion is to the post of Economic Advisor.

2. DPC for the vacancy of that post, referable to the year 2011-12 was held on 24.10.2011. The APARs for 5 years preceding 2009-10 became relevant for this purpose. For the year 2006-07 the APAR of the applicant was graded as 'Good', which is below bench mark. The applicant was communicated the APAR of 2006-07 in the light of the guidelines issued by the DoPT vide office memorandum dated 06.01.2010 and 13.04.2010. The applicant submitted his representation in terms thereof. Taking the same into account, the competent authority upgraded the APAR to 'Very Good' through order dated 07.04.2011 which however was not a speaking one.

3. The DPC considered the case of the applicant. It was opined that the order dated 07.04.2011 passed by the competent authority upgrading the APAR for the year 2006-

07 cannot be sustained, on consideration of the remarks made by the reporting and reviewing authorities. Accordingly, the applicant was treated as not fit for promotion. He was promoted in the year 2014. However, the speaking order in relation to the APAR of 2006-07 was communicated on 17.11.2011.

4. The applicant made several representations to the competent authority stating that for no fault of him, he has been denied promotion, which is otherwise due to him in 2011. He mentioned that the competent authority was convinced that the gradation given in the APAR of 2006-07 was not proper and accordingly upgraded the same and if reasons are not stated for the upgradation, it is not his fault. Ultimately, he stated that once the speaking order has come from the competent authority, his case needs to be considered by conducting the Review DPC. The respondents passed order dated 18.06.2012 rejecting the representation. Further representation made on 01.08.2012 was also rejected on 16.10.2012. This O.A is filed challenging the said communications and for a relief in the form of direction to the respondents to conduct a review DPC. Certain other reliefs are also claimed.

5. The applicant contends that APARs for his entire career are rated as 'very good' or 'outstanding' and a single APAR was made without proper assessment, which too was upgraded later on, and that he cannot be denied what was otherwise due to him. It is pleaded that the lapses, if at all, were on the part of the competent authority in failing to furnish reasons while upgrading the APAR and that cannot be treated as ground to deny him promotion in 2011.

6. The respondents filed a detailed counter opposing the O.A. It is stated that every possible measure, as mandated under the relevant guidelines was taken and the case of the applicant was considered for promotion in accordance with the extant rules. It is also mentioned that for concerned year, even though there was no speaking order, the DPC has bestowed its attention and being not satisfied with the upgradation, the promotion was denied to the applicant. Ultimately, it is submitted that there is no ground for holding review DPC.

7. We heard the applicant who argued the case in person and Mr. Ashish Nischal with Mr. Rajinder Nischal, learned counsel for respondents no. 1 & 3 and Mr. Naresh Kaushik with Mr. Devik Singh for respondent no.2.

8. The entire issue is about promotion of the applicant to the post of Economic Advisor. As a matter of fact he has been promoted to the post in the year 2014. The controversy is as to whether he is entitled to be promoted in the year 2011 when the DPC considered his case in its meeting held on 24.10.2011.

9. The DPC did consider the case of the applicant for promotion in 2011. The only factor that came in the way was the appraisal for the year 2006-07. The reporting authority as well as the reviewing authority graded the applicant as 'good' which is below bench mark. However, on the basis of the representation made by the applicant, the competent authority enhanced it to 'very good' which however, was not followed by any reasons. The guidelines issued by DoPT from time to time mandate that whenever APAR of an employee is downgraded or upgraded, it must be followed by reasons. Consequences of failure to furnish reasons are also indicated.

10. In the instant case, faced with the non-speaking order, the DoPT bestowed its decision for consideration of APAR for 2006-07 and opined that the upgradation is not warranted. That was in the light of

there not being any reasoned order by the competent authority.

11. We have examined the entire record pertaining to the DPC which met on 24.10.2011 and we do not find any error or mistake on the part of the DPC. The matter, however, does not rest at that. On 17.11.2011, the competent authority for the applicant has passed a reasoned order in support of the upgradation of the APAR for 2006-07. Since that was not available when the DPC met, the applicant was denied benefit thereof. Number of representations were made to the competent authority bringing these facts to their notice.

12. It is true that there is no provision of conducting the review DPC, except in very limited circumstances such as where an important fact has missed the attention of the DPC. This is not a case where the applicant made any further representation, on the basis of which the reasoned order was passed. It is on the basis of the very representation that initially a non-speaking order, and thereafter a speaking order was passed. Valuable right that accrues to an employee, on the basis of the long

service cannot be denied on the basis of small lapse on the part of the competent authority.

13. We are of the view that the factum of the competent authority passing a detailed speaking order dated 17.11.2011 needs to be considered by a review DPC with reference to the DPC of the years 2011-12. Such a course would not adversely affect the rights of any other officer, even if the applicant becomes eligible for promotion in the DPC.

14. We, therefore, dispose of the O.A directing the competent authority i.e., the respondent no. 1 to send the proposal for conducting review DPC on the basis of the order dated 17.11.2011 passed by the competent authority within a period of three months from the date of receipt of copy of this order. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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