

**Central Administrative Tribunal
Principal Bench**

OA No.3629/2013

New Delhi, this the 25th day of April, 2018

**Hon'ble Mr. Justice Dinesh Gupta, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

Ram Pal Sharma
Flat No.366m
Pocket-D, G-III,
Vikas Puri,
New Delhi.

... Applicant.

(By Advocate : Shri Naresh Kaushik)

Versus

1. Delhi Development Authority
Through its Chairman
Vikas Sadan, INA,
New Delhi 110 023.

2. Engineering Member
Delhi Development Authority
Vikas Sadan, INA
New Delhi 110 023.

3. Assistant Director (CR)
Delhi Development Authority
Vikas Sadan, INA,
New Delhi 110 023.

.... Respondents.

(By Advocate : Ms. Geetanjali Sharma)

: O R D E R (ORAL) :

Justice Dinesh Gupta, Chairman :

By means of this OA, the applicant has prayed for the following reliefs:-

“a. allow the present Original Application.

- b. Direct the respondents to accept the recommendations of the reviewing officers, deeming the ACRs for the period of 2006-07, 2007-08 and 2008-09 to be very good and hold a review DPC for the grant of MACP Scheme for the applicant; alternatively.
- c. Direct the Respondents to hold a review DPC disregarding the ACRs which have not been communicated to the applicant.
- d. Grant all consequential benefit to the applicant flowing from the aforesaid directions.
- e. Pass such other or further orders which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

2. Brief facts of the case are that the applicant was appointed as Surveyor in Delhi Development Authority (DDA) on 28.09.1981. He was promoted as Assistant Director (Survey) on 03.06.2005. The applicant became eligible for 3rd financial upgradation on 24.09.2011, i.e. on completion of 30 years of service. It is stated that on 16.05.2012, the respondent on the basis of Departmental Promotion Committee (DPC), Engineer Member, DDA, granted the 3rd financial upgradation under Modified Assured Career Progression (MACP) Scheme to a list of 8 persons (Annexure A-3). However, the applicant's name was not included in the said list. The applicant made a representation dated 21.06.2012 to the Assistant Director (CR) stating that he was not informed of the status of his ACRs from the year 2003 to 2012 and asked for reasons/circumstances for not

communicating the gradings in his ACRs. Since no reply was given by the respondent, the applicant made another representation dated 04.07.2012 to the Assistant Director again asking for reasons of not communicating his ACRs. Both these representations dated 21.06.2012 and 04.07.2012 are annexed as Annexure A-4 (colly). The applicant made another representation dated 27.07.2012 to the concerned authority, i.e., the Engineering Member asking for grant of 3rd financial upgradation. Having not received any reply, the applicant was constrained to file a RTI dated 05.09.2012. In response to the said RTI, vide letter dated 17.09.2012 (Annexure A-6), the applicant was informed as under:-

“The financial upgradation would be subject to fitness, in the hierarchy of grade pay within the PB-1. Thereafter, for upgradation under the MACPs, the benchmark of ‘good’ would be applicable till grade of Rs.6600 in PB-3. The bench mark will be ‘very good’ for financial upgradation to the Grade of Rs.7,600 and above.”

The respondent vide letter dated 10.09.2012 replied to the applicant's representations dated 21.06.2012 and 04.07.2012 regarding his confidential reports for the period 2003-2004 to 2011-2012. In their reply, the respondents have stated that the ACRs grading for the period 2008-09 to 2011-12 had already been intimated to the applicant vide letter dated 16.03.2012, 08.12.2011 and 25.06.2012. The gradings of the applicant for the period 2003-04 to 2007-08 are as under:-

S.No.	Period	Reporting Officer	Reviewing Officer	Counter Signing Officer
1.	2003-04	Very Good	Very Good	Very Good
2.	2004-05	Very Good	Very Good	Very Good
3.	2005-06	Very Good	Good	Condoned
4.	2006-07	Very Good	Good	-
5.	2007-08	Very Good	Good	Good

It is stated that for the aforementioned period, the applicant was shown all his ACRs for the first time vide respondent's letter dated 10.09.2012. It is further stated that for the years 2005-06 to 2007-08, even the Reporting Officer graded him 'Very Good', however, the Reviewing Officer and Countersigning officer had downgraded him to 'Good' without giving any reasons. The applicant made a representation dated 02.11.2012 to the Engineer Member (the concerned authority) requesting for review of the grading downgraded by the countersigning authority and grant of MACP due to him w.e.f. 28.09.2011. The respondent replied to the said representation vide letter dated 20.03.2013 wherein they have stated that the request of review of ACR had been examined by the competent authority and it had been decided that the overall grading

given in the applicant's APARs for the year 2006-07 to 2008-09 could not be improved. Being aggrieved of the decision of the respondent, the applicant filed various RTIs, and in reply thereto, it was found as follows:-

“a. Regarding request for review of APARs in respect of the applicant for the period of 2006-07, 2007-08 by Shri S. P. Bansal, the reviewing authority, the following was noted:-

- i. The applicant had been working under Dy. Director, Shri Ashok Sakhu, who had retired.
- ii. The grading given by the Dy. Director as reporting officer the overall score on various parameters of work applicable in the prescribed CR format totaled as-‘7 Good’ and ‘7 Very Good’, i.e. ‘Good’ and ‘Very Good’ in equal number.
- iii. For 2006-07, the reviewing officer had granted all the 5 grading parameters as ‘good and the reviewing officer had also retired.
- iv. For the period 2007-08 on the request of the Personnel Department vide letter of DD (CR) dated 15.05.2008 Sh. S. P. Bansal had filed the report both as Reviewing Officer and Counter Signing Officer.
- v. As counter signing officer Shri S. P. Bansal mostly agreed with the grading given by the reporting and that of the review officer with the overall understanding that there was nothing adverse.

Recommendation

In view of the above facts and the request forwarded for the review by the CR Cell, Shri S. P. Bansal was of the view that in the instant case for the period 2006-07 and 2007-08, taking note of the

grading given by the Reporting Officer specially, for i. performance in carrying out inspection, ii. Attitude to work, and iii. Control and supervision as significant and overriding parameters, the overall grade/performance of the applicant for the period 2006-07 and 2007-08 may be considered as 'Very Good' instead of 'Good'.

For the period of 2008-09, Shri Vinod Sakle (the reviewing officer) reviewed the APAR and the following was observed:-

- i. The Applicant was posted under Dy. Dir (Survey) Sh. Ashok Saluja who had retired.
- ii. There were 23 parameters of work applicable in the prescribed CR format and Dy. Dir (Survey) as reporting Officer had given grading as 8-Very Good, 6-Good and 7-N/A, and whereas in two cases, i.e. Sl. No.1 & 4 no grading or details were given.
- iii. As per Sl. No.1& 4 grading was not given And the same were not applicable in the instant case, the overall grading of Very Good become higher as 8-Very Good'.
- iv. These grading were given with the overall understanding that there is nothing adverse against the order.

Recommendation

In view of the above position and request forwarded by the CR Cell for review, since grading parameters totaling '8' were given 'Very Good' by the then Reporting Officer, the overall grade performance of the applicant for the period 2008-09 may be considered as 'Very Good' instead of 'Good'.

That in view of the cogent reasoning explanations given by the reviewing officers for upgrading the ACRs for the period of 2006-07, 2007-08 and 2008-09 to 'Very Good', the ACRs should have been deemed as upgraded.

However, in the RTI reply dated it was seen from the file notings of the Engineering Member (Accepting Authority), that he neglected the above

reasons and explanations and took the following view:-

“Sh. D.K. Saluja, Dir the then reviewing officer for the year 2006-07 & 2007-08 since retired. Shri S. P. Bansal Addl Commissioner the then counter signing officer for the year 2006-07 & 2007-08, commend without any new date/information similarly he has done for the period 2008-09 in same fashion.

Shri Vinod Sakle, Dir, the then reviewing officer for the period 2008-09 also changed stand without support of any fresh/new inputs.

In view of above, the APAR of Shri Ram Pal Sharma AD (Survey) for the periods 2006-07, as “Good”. Please convey”. Therefore, the Engineering Member without any application of mind to the reasons given by the countersigning/reviewing officer has rejected them while observing that there were no fresh inputs. The Engineering Member while rejecting has not adverted to the fact that no new fresh inputs were required in view of the wrong downgrading by the countersigning officer at the initial stage.

3. Shri Naresh Kaushik, learned counsel for the applicant has vehemently contended that the gradings in the ACRs of the applicant has never been communicated to him prior to 2011, which has resulted in denial of 3rd financial upgradation. He has contended that all the below benchmark ACRs should be communicated to the employee before such ACRs are placed before DPC so that the employee can make a representation against the below benchmark ACR gradings. However, no such opportunity was given to the applicant. He has further contended that perusal of the letter dated

10.09.2012 would reveal that the respondents have only provided copies of ACRs for the period 2008-09 to 2010-11 and have not provided all the below benchmark ACRs to the applicant.

4. Shri Kaushik further contended that the gradings given by the Reporting Officer in the ACRs of the applicant for the period 2006-07 to 2008-09 were "Very Good". However, the Countersigning/Reviewing Officer downgraded the ACRs from 'Very Good' to 'Good' without according any reason or explanation in that regard, which is in clear contravention of office memorandum dated 10.08.1989 which clearly provides that the higher authority should apply its mind. On representation of the applicant against the below benchmark ACRs which were shown to him on 10.09.2012, the reviewing Officers have upgraded the ACRs from 'Good' to 'Very Good' by giving sufficient reasons and explanations. However, the Accepting Authority has not accorded any merit to such reasons and has rejected the review while observing that no new fresh input/information was received. He has further submitted that for the period 2006-07, 2007-08 and 2008-09, no memo was ever served to the applicant nor was there any slackness in performance of his official duty. Further, the countersigning authority never inspected the applicant's site during his tenure nor did the applicant work directly under

him. Therefore, the downgrading of the ACRs by the countersigning officer without any reasons is wholly arbitrary. One more ground taken by learned counsel for the applicant is that as the ACRs were not communicated to the applicant, the DPC should not have been guided merely by the overall grading, if any and should have made its own assessment on the basis of the entries in the ACRs because ACR may be inconsistent with the grading under various parameters or attributes as per the DoP&T OM dated 10.04.1989.

5. Learned counsel for the applicant has placed reliance on the judgment of Apex Court in the matter of ***Dev Dutt vs. Union of India*** reported in (2008) 8 SCC 725, wherein the Apex Court has provided that the employee should be communicated all his ACRs. In paras 38 & 39, the Apex Court has held as under:-

“39. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by [Article 14](#) of the Constitution in our opinion requires such communication. [Article 14](#) will override all rules or government orders.

40. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.”

6. On the other hand, Ms. Geetanjali Sharma, learned counsel for the respondents submitted that the applicant was communicated grading in his ACRs for the period 2003-2004 to 2007-2008 vide letter dated 10.09.2012. His ACRs for the period from 2008-09 to 2010-2011 were communicated to him vide letter dated 16.03.2010, 08.12.2011 and 25.06.2012. It is also stated that review of applicant's ACRs for the period 2006-07, 2007-08 and 2008-09 has already been done. She has further submitted that after considering all the ACRs of the applicant for the period from 2006-2007 to 2008-2009, the competent authority decided not to upgrade the ACR of the applicant and the overall grading of “Good” given to the applicant does not require interference.

7. With regard to the contention of the applicant that he was not considered by the DPC held on 16.04.2012, the stand of the respondents is that the ACRs of the applicant were duly

considered, but the DPC assessed him “Unfit” giving reason that the ACRs of the applicant for the period from 2005-06 to 2008-09 were below benchmark. It is contended on behalf of the respondents that as per the instructions and guidelines governing the grant of financial upgradation under the MACP Scheme, the financial upgradation would be on non-functional basis, subject to fitness, in the hierarchy of grade pay within PB-1. Therefore, for upgradation under the MACPs, the benchmark of “Good” would be applicable till the grade pay of Rs.6600/- in PB-III, and the benchmark will be “Very Good” for financial upgradation to the Grade Pay of Rs.7600/- and above. In the present case, the benchmark required is “Very Good”. The applicant’s grading in the ACRs for the period from 2003-2004 to 2007-2008 was communicated to him vide respondent’s letter dated 10.09.2012. His gradings in his APARs for the period from 2008-2009, 2009-2010 to 2010-2011 were also communicated to him vide letter dated 16.03.2010, 08.12.2011 and 25.06.2012. Learned counsel for the respondents further submitted that on the representation received from the applicant, the respondents took steps to get comments on his ACRs for the period from 2006-07 to 2008-09, and the applicant informed the respondent that Shri A. K. Sakhuja, Dr. Director (S) who is reporting officer for the year 2006-07 to 2008-09 had retired and, therefore, it is not

possible to obtain report from him. However, a letter dated 18.12.2012 was sent to Shri S. P. Bansal, Additional Commissioner (Planning), the then Reviewing Officer and Countersigning Officer for the years 2007-08 and 2008-09 with a request to offer his comments on the grading given by the Reporting Officer, Reviewing officer and Countersigning Officer. A similar letter was also issued on 21.12.2012 to the then Reviewing Officer for the year 2008-09, Shri Vinod Sakle, Director (Planning) with a request to offer his comments on the ACR of the applicant for the period 2008-09. Thereafter, the matter was placed before the higher authority, i.e., Engineering Member, DDA. After taking into account the ACRs of the applicant for the aforementioned and other period, the applicant's representation for review of his CRs, comments dated 31.01.2013 offered by Dr. S. P. Bansal, the Reviewing Officer for 2007-08 and counter signing officer for the year 2008-09, and also comments given by Mr. Vinod Sakle, Director (Planning), the Reviewing Officer for the year 2008-09, the competent authority did not accede to the request of the applicant and decided that the ACR shall carry final grading as "Good". The said decision was conveyed to the applicant vide letter dated 20.03.2013.

8. The applicant has filed rejoinder to the counter affidavit filed by the respondents. While reiterating the averments made

in the OA, it is mentioned that no communication whatsoever was made to the applicant regarding his ACRs/APARs for the period 2008-2009, 2009-2010 and 2010-2011 vide letter dated 16.03.2010, 08.12.2011 and 25.06.2012. No evidence has been adduced by the respondent in order to prove the alleged communication of ACRs. It is reiterated that the applicant became aware of his ACRs for the period from 2008-09 to 2010-2011 only on 10.09.2012. It is further stated in the rejoinder that on the request of applicant for review of his ACRs, the Reviewing Officer and Countersigning Officer Dr. S. P. Bansal and Shri Vinod Sakle replied in affirmative and recommended that the overall grading of the applicant for the period 2006-07, 2007-08 and 2008-09 may be considered as 'Very Good' instead of 'Good'.

9. We have heard learned counsel for the parties.

10. Learned counsel for the applicant has reiterated the facts as stated by him in the OA as well as in the rejoinder to reply filed on behalf of the respondents. He further submitted that during the pendency of this OA, the respondents have, in fact, granted 3rd MACP to the applicant vide order dated 01.09.2016 w.e.f. 28.09.2013. However, learned counsel for the applicant submitted that if the ACRs of the applicant for the period from 2006-07 to 2008-09 be treated from "Good" to "Very Good", he

is entitled to 3rd MACP from back date. He further submitted that the applicant for the first time was communicated the entries for the period 2006-07 to 2008-09 and he represented against the entries in his representation. His ACRs were sent to the Reviewing Officer who upgraded his ACRs from “Good” to “Very Good” by giving sufficient reasons and explanation. However, the Accepting Authority has not accorded any merit to such reasons and has rejected the representation of the applicant observing that no new fresh inputs/information was received for the period 2006-07 to 2008-09 and the overall grading remained as “Good”. Learned counsel for the applicant further submitted that the Accepting Authority has failed to consider the specific reasons accorded by the Reviewing Authority for upgradation of applicant’s ACRs from “Good” to “Very Good”, and also failed to consider that no memo was ever served to the applicant nor issued any warning for any slackness in performance of his official duties. Even the Accepting Authority never inspected the applicant’s site during his tenure nor did the applicant work directly under him. Therefore, downgrading of the ACRs by the reviewing officer/countersigning officer was without any reasons and it was arbitrary. He further submitted that since the ACRs of the applicant from 2006-07 to 2008-09 were not communicated to him, therefore, the Departmental Promotion

Committee (DPC) should ignore these entries as they were never communicated to the applicant in view of the judgment rendered by the Hon'ble Supreme Court in ***Dev Dutt's case*** (supra). Learned counsel for the applicant submitted that in the said judgment, the Apex Court has clearly observed that all the entries should have been communicated to the employee specifically when the entries in the ACRs are said to be adverse. He further submitted that in the case of the applicant the benchmark is "Very Good" for grant of MACP and the overall grading given to the applicant is "Good" which is below benchmark and it should have been treated as an adverse and, therefore, the same has to be communicated to the applicant which was not done by the respondents.

11. The respondents have already granted MACP to the applicant from 2013 considering the ACRs of the applicant for the period 2008-09 onwards. Hence, so far as overall gradings of 2006-07 to 2008-09 is concerned, it should have been considered as equivalent to the benchmark and on the same pattern, the entries of 2006-07 and 2007-08 should also be considered equivalent to benchmark and the applicant is entitled to the grant of MACP benefit from the date when it was due to him.

12. Learned counsel for the respondents submitted that the applicant's ACRs for the period 2006-07 & 2007-08 were communicated to the applicant and he was asked to submit his representation. The Reviewing Authority has upgraded his overall grading. However, the same was considered by the Accepting Authority who is competent to take a decision not to upgrade the ACRs of the applicant and the overall grading of "Good" given to the applicant does not require any interference. He further submitted that it is not disputed that so far as the benchmark for 3rd financial upgradation is concerned, it is "Very Good" while the applicant has not been awarded "Very Good" entry for the last five years. As such, the DPC rightly did not consider him to grant the MACP. It was only after three years considering the past five years entries, the applicant was granted MACP from the year 2013. We are unable to accept the contention raised by learned counsel for the respondents. Admittedly, the applicant's entries as provided by him in a chart in the OA, the overall grading for the year 2003-04 and 2004-2006 are "Very Good". So far as the gradings for the years 2005-06 to 2007-08 are concerned, the Reporting Officer has graded the applicant as "Very Good" for the years 2005-06 to 2007-08, however, the Reviewing Officer downgraded the overall performance and awarded the entry "Good". The same entries were communicated to the

applicant who made representation against them and the entries along with his representation were sent to the Reviewing Officer Shri S. P. Bansal, who vide his letter dated 31.01.2013 upgraded the entries for the period 2006-07 & 2007-08 to "Very Good" instead of "Good". In his report, the Reviewing officer has specifically taken note of the grading given by the Reporting Officer specially (i) for performance in carrying out inspection and (ii) attitude to work and (iii) control and supervision as significant and overriding parameters. Similarly, Shri Vinod Sakle to whom the representation along with ACR for the period 2008-09 were sent for his comments also considered the same and given the following reasons for upgradation of the gradings given in the applicant's ACR:-

- i. The Applicant was posted under Dy. Dir (Survey) Sh. Ashok Saluja who had retired.
- ii. There were 23 parameters of work applicable in the prescribed CR format and Dy. Dir (Survey) as reporting Officer had given grading as 8-Very Good, 6-Good and 7-N/A, and whereas in two cases, i.e. Sl. No.1 & 4 no grading or details were given.
- iii. As per Sl. No.1& 4 grading was not given And the same were not applicable in the instant case, the overall grading of Very Good become higher as 8-Very Good'.
- iv. These grading were given with the overall understanding that there is nothing adverse against the order.

In view of the aforesaid reasons, and on the request forwarded by the CR Cell for review, Shri Vinod Sakle recommended that since

grading parameters totalling '8' were given "Very Good" by the then Reviewing Officer, the overall grade performance of the applicant for the period 2008-2009 be treated as "Very Good" instead of "Good". Dr. S. P. Bansal also vide his letter dated 19.02.2013 agreed with the observation of the Reviewing Officer that the overall performance of Rampal, the applicant, for the period 2008-09 may be considered as "Very Good" instead of "Good". So far as the order of the Accepting Authority is concerned, the applicant has filed the same along-with the OA.

13. The Accepting Authority wrote a note that Shri S. P. Bansal, Additional Commissioner, the then Countersigning Officer for the periods 2006-07 and 2007-08 commented without any new data/information. Similarly, he has done for the period 2008-09 in the same fashion. Shri Vinod Sakle, Director (Planning), the then Reviewing Officer for the period 2008-09 also changed the stand without any support of any fresh memo/inputs and, therefore, the Accepting Authority maintained the grading as "Good" for the periods 2006-07 to 2008-09. This note and the order of the Accepting Authority itself appear to be not based on factual aspect. Thus, it appears that the report of Shri S.P. Bansal and Shri Vinod Sakle, the then countersigning officer and reviewing officer were not placed before the Accepting Authority. Both the officers have given cogent

reasons for upgrading the overall grading of applicant, Rampal, from “Good” to “Very Good”. The Accepting Authority has not disputed the reasons given by the then Countersigning Officer and Reviewing Officer for the periods 2006-07 to 2008-09. Thus, the order dated 20.03.2013 cannot be sustained in the eyes of law and deserves to be quashed. Ordered accordingly. Since the respondents have also considered the entry of 2008-09 for granting MACP to the applicant and so far as the entries for the period 2006-07 and 2007-08 are concerned, they are already upgraded by the Reviewing Officer from “Good” to “Very Good” and they match the benchmark provided for 3rd MACP, the applicant is entitled for the relief which he claimed.

14. In view of the above, the OA is allowed. The respondents are directed to accept the recommendation of the Reviewing Officer and the Countersigning Officer for the period 2006-07 to 2008-09 to be “Very Good” and convene a review DPC for granting MACP to the applicant from the due date, and will also provide all the consequential benefits to him.

(K. N. Shrivastava)
Member (A)

(Justice Dinesh Gupta)
Chairman

/pj/