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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

Date of order : 19.01.2016

No.O.A.350/00691/2015

Present : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

SUKUMAR MUKHOPADHYAY

VS.

UNION OF INDIA & ORS.

For the applicants : Mr. A. Chakraborty, counsel
Ms. T. Das, counsel
Ms. P. Mondal, counsel

For the respondents : Mr. B.P. Manna, counsel

ORDER

Per Ms. Jaya Das Gupta, A.M.

This application has been filed under Section 19 of Administrative Tribunals Act, 1985 seeking the following reliefs:-

"a) Office Order dated 20/12/2013 issued by the Under Secretary to the Government of India, Office of the Registrar General of India, Ministry of Home Affairs, cannot be sustained in the eye of law and therefore the same may be quashed;

b) Office Order dated 02/12/14 issued by the Under Secretary to the Govt. of India, Office of the Registrar General of India, Ministry of Home Affairs, cannot be sustained in the eye of law and therefore the same be quashed;

c) An order do issue directing the respondents to grant the benefit of 2nd ACP after completion of 24 years of service as the general grading recorded by the Reviewing Officer were up-graded and the grade good was recorded in the ACR and to grant all consequential benefits."

2. The applicant was initially appointed as an Operator on 17.03.1983. The said post was redesignated as Data Entry Operator Gr.B w.e.f. 11.09.1989 in the revised scale of Rs.1350-2200, the corresponding scale of which as per fixed 5th CPC was Rs.4500-7000 w.e.f. 01.01.1996. As per ACP Scheme the applicant was not entitled to 1st ACP benefit as he already got one promotion on 23.03.1993. After completion of 24 years of service on 17.03.2007 the applicant was granted 2nd ACP benefits in the next higher pay scale of the 5th CPC i.e. in the scale of Rs.5500-9000 which was later withdrawn and it is the subject matter of dispute in the present O.A. The applicant retired from service on attaining the age of superannuation w.e.f. 31.01.2014 from the post of Sr. Supervisor in the scale of Rs.9300-34800 (G.P Rs.4600/-). The applicant got only one promotion on 23.03.1993. Since for 24 years of service she got only one

promotion, he becomes eligible for 2nd ACP on completion of 24 years. Hence her prayer in this O.A.

3. Per contra, it is the case of the respondent authorities that the present O.A. should be dismissed because based on a letter from the Office of the Registrar General dated 15.10.2008, they were instructed that there will be no change of pay after getting ACP as no increment shall be allowed in the revised pay structure when a Government servant is promoted within the merged pay scales. Another reason for withdrawing the 2nd ACP benefits was that there were adverse remarks in her ACRs and hence, he was not fit for promotion/upgradation as on the date he was considered for 2nd ACP.

4. The issue in question is whether as per the ACP Scheme the applicant is entitled to get the 2nd ACP from 17.03.2007 i.e. after 24 years of service as he had got only one promotion in the year 1993 ,in the intervening period and whether he fulfilled the eligibility for promotion as on the due date. As per the ACP Scheme, upgradation under ACP to the next higher scale of pay will be allowed only when the employee is found fit for promotion as on that date, that means, he had to attain the bench mark grading in the concerned ACRs.

5. Heard both.

6. The question of withdrawing the 2nd ACP based on the letter from Registrar General of India, New Delhi dated 15.10.2008(Annexure R-1) on the ground that there will be no change in pay after getting ACP as no increment shall be allowed in the revised pay structure where a Government servant is promoted within the merged pay scale, does not arise at all as the applicant in this case has not been promoted in her entire career. Moreover, the question of merging of promotional scales came from 01.01.2006 as per recommendation of 6th CPC and the benefit thereto, comes only from MACP Scheme which is made effective from 01.09.2008. (merging benefits).

7. The issue of ACRs will be dealt with in details now. From Annexure A-I to the application, vide an order dated 2/3.08.2007 the applicant after completion of 24 years of service was allowed 2nd ACP w.e.f. 17.03.2007 which was later withdrawn by the respondent authorities for the reasons given above(supra). The counsel for the respondent authorities have submitted the proceeding of the meeting of the Screening Committee based on which the case of the applicant for 2nd MACP was rejected. The Screening Committee meeting took place on 15.03.2013. The relevant portion of the screening committee meeting is extracted below for ready reference:-

" Subject : Grant of ACP to Data Entry Staff in various Directorates.

The office of RGI has received proposal for grant of ACP to the following Data Entry Staff posted in various Directorates of Census Operations (DCO WB, Bihar). The

cases in respect for following employees are pending and remaining cases have already been disposed in concerned files. The service particulars of the staff is as following:-

Sl.No.	Name of the Employees, post, pay scale and DCO, Date of appointment	Due ACP and due date of ACP	Remarks ACRs under reckoning on due date of ACP
2.	Sri Sukumar Mukhopadhyay,Jr. Sup,5000-8000/-, DCO West Bengal, 17.03.83	2nd ACP on 17.03.07 in GP 4600/-	2000-01 to 2004-05

Xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

2. DCO has certified the service particulars of the employees and has certified that they are clear from vigilance angle on the due date of ACP. The ACRs under reckoning and for the further period are placed at F/A, the bench mark for ACP to the pay scale of Rs.5500-9000/-(to be revised to PB-2, GP 4600/- in the light of 6th CPC pay structure) is Good. The employees meeting at least 4 bench mark ACRs out of previous 5 years ACRs under reckoning is deemed as fit for grant of ACP. Serial No.6, 15, 16,17 and 18 apparently meet bench mark on the due date of ACP. In respect of remaining employees, they are apparently not meeting the bench mark of at least four Good. ACRs out of preceding 5 years ACRs on due date of ACP and till functional date of ACP i.e. 31.8.2008. Sl.No.7,8,10 and 19 are apparently meeting benchmark on 01.04.2008 for ACP by taking into consideration ACR of period 2002-03 to 2006-07.

3. DOPT vide their OM No.21011/1/2011-Estt.(A) dated 13.04.2010 as prescribed that for future DPCs the below bench mark ACRs are to be communicated to the concerned employees and final decision be taken. Some of the employees were communicated their ACRs under the provision of said OM and their ACRs have further been upgraded by competent authority. The matter was further clarified from DOPT on whether the OM dated 13.04.2010 is applicable to delayed DPCs as well. The DOPT clarified that the OM is meant for future assessment only. In the light of DOPT clarification it is apparent that the above mentioned cases which are cases of delayed DPCs (Screening Committee) are not strictly covered under OM dated 13.04.2010.

4. As per the RRs of Sr. Supervisor (Pay scale 5500-9000/-) the following of composition of DPC is prescribed. Accordingly the member of same DPC may see the proposal for their recommendation regarding grant of 2nd ACP in the scale Rs.5500-9000/-(to be revised to PB-2, GP 4600/- in the light of 6th CPC pay structure);-

RGI	CHAIRMAN
Additional RGI/J.R.G.I.	MEMBER
Addl. Director(EDP)/JD(EDP)	MEMBER
Director (Sh. R.C. Nayak(FFR), MHA	MEMBER

Kind approval of RGI is solicited on the recommendations of the Committee."

8. From the above proceedings it appears that the bench mark for promotion was "good" and that bench mark was to be achieved at least in four yearly ACRs out of previous 5 years ACRs under reckoning. As the due date for ACP for the applicant fell on 17.03.2007, the five concerned ACRs would be 2000-2001, 2001-2002, 2002-2003, 2003-2004 and 2004-2005 and out of these five ACRs any four ACRs should have the grading as "good". On a perusal of Annexure A-4, which is a letter from Deputy Director and Head Office Director of Census Operations, West Bengal addressed to Sri Manoj Dehury, Under Secretary, Ad-IV, Office of the Registrar General of India, New Delhi on 06./09.07.2012, it appears that two ACRs pertaining to the year 2003-2004 and 2004-2005 where previously adverse remarks had been noted, were upgraded as "good". Annexure A-4 is extracted below:-

"File No.A 12096/Estt/2009/1398 Date : 06/09.07.2012

To
Sri Manoj Dehury,
Under Secretary, Ad-IV,
O.R.G.I., 2A, Mansingh Road,
New Delhi – 110 011.

Sub : Follow up of Pending proposals for grant of 2nd ACP in officials, DCO, W.B. reg.

Sir,

In reference to your office letter No.A32011/47/2011-Ad-IV (copy portion) dated 07/10.11 and ORGI letter No.32111/9/2009-Ad IV (pt) dt. 07/04/2011(copies enclosed), I am directed to forward herewith the detailed proposals form, in prescribed proforma in respect of 5(five) officials (Annex-I) with recommendation of the Controlling Officer for grant of 2nd ACP. The additional information for implementation of MACP/ACP cases are submitted in the prescribed proforma (Annexure-II). The final order regarding revised grading after review is placed in Annex-III (A to E).

Sl.	Name of officials	Designation	Years in which below bench mark grading was awarded in ACR	Revised grading as per final order
1	2	3	4	5
1.	Sri Sukumar Mukhopadhyay	Sr. Supervisor	2003-04,2004-05	Good
2.	Sri Aloke Roy	Sr. Supervisor	2001-02, 2003-04,2004-05	Good
3.	Sri Tapan Chakraborty	DEO Gr.B	2003-04, 2004-05	Good
4.	Smt. Puspa Saha	DEO Gr.B	2003-04, 2004-05	Good
5.	Smt. Purnima Roy	DEO, Gr.B	2002-03, 2004-05	Good

This is for your kind consideration and further necessary action regarding grant of 2nd ACP.

Yours faithfully,

(S. Dasgupta)
Deputy Director
Deputy Director & H.O.
Director of Census Operations
West Bengal"\

The above letter has emanated because of the letter of the Accepting Authority dated 07.06.2012 which the counsel for the respondent authorities submitted in open court. Said letter is extracted below:-

"Government of India
Ministry of Home Affairs
Directorate of Census operations, West Bengal
Janganana Bhavan
IB, 199, Sector-III, Saltlake City

Kolkata -700106

File: A-28016/Estt./2006 Gr.(B+C) Part-IV/910 Date : 07.06.2012

ORDER

Whereas, it appears that there is a representation submitted by Sri Sukumar Mukhopadhyay, Sr. Supervisor dated 13.02.2012 in respect of grading in the ACR for 2003-2004 and 2004-05 in connection with the letter corresponded to him under MEMO No. A-28016/Estt./2006 Gr. (B+C) Part-IV/3543 dated 02.02.2012 which speaks for itself and the relevant representation has been considered by the undersigned being the present "Accepting Authority" of the ACR of the said official. And whereas the said official in her representation dated 13.02.2012, addressed to the Dy. Director, has stated to re-consider the remarks in the ACR for 2003-2004 and 2004-05 that have jeopardized her career prospect to a large extent;

And whereas, it is observed that the ACR of the said official for the period 2003-2004 was graded as "Average" on 05.01.2005 by Sri Prabir Kumar Das, Assistant Director (now retired) of this Directorate as Reporting Officer and Sri R.K. Ram, Deputy Director,(now JDCO and posted to DCO, Uttarakhand) of this Directorate also accorded remarks as "Average" on 01.06.2005 being as Reviewing Officer for the aforesaid period, for the period 2004-05 was graded as "Average" on 18.01.2006 by Smt. Kiran Talukdar, Assistant Director(now retired) of this Directorate as Reporting Officer and Sri R.K. Ram, Deputy Director,(now JDCO and posted to DCO, Uttarakhand) of this Directorate also accorded remarks as "Average" on 19.06.2006 being as Reviewing Officer for the aforesaid period;

And whereas, as per DOPT's office Memorandum No.21011/1/2010 Estt.A dated 13th April, 2010 read with the subject matter of it, it is convinced that the said official is under the preview of ACP/MACP, as such, the ACR for the period of 2003-2004 and 2004-2005 could not be forwarded to the then Reporting Officer, but the same had been forwarded to Sri R.K. Ram, JDCO, DCO, Uttarakhand vide this office letter of even reference No./3765 dated 23.02.2012 for necessary re-consideration. The Reviewing Officer, Sri R.K. Ram, JDCO have agreed to change the grading from "Average" to "Good" vide DCO, Uttarakhand letter No.11011/57/2007/Estt./709 dated 08.05.2012, that have also been made recorded, observed from the records;

And whereas, the undersigned has also consulted the previous ACRs of the said officials, vig; for the year 2001-02, 2002-03, 2005-06 and 2006-07 as well as observed that the general grading of the said official are "Good";

And whereas the undersigned does not find any adverse reporting about the manner of work performed by the official in question, depicted in the official records;

Now therefore the undersigned of the view that the general grading recorded by Reviewing Officer in the ACR of 2003-04 and 2004-05 have been made upgraded, taking into account the past records of the said official and the grade **'Good'** is to be considered as ACR grading of **Sri Sukumar Mukhopadhyay, Sr. Supervisor** of this office for the year **2003-2004 and 2004-2005**.

(D. Gosh)
Director"

It is amply clear that the letter dated 06/09.07.2012(Annexure A-4) was not brought to the notice of the Screening Committee when they met on 15.03.2013, with the upgradation of down graded ACRs of 2003-2004 and 2004-2005 to the required bench mark of "good". The applicant became fit for promotion/upgradation from the date he was eligible to get the 2nd ACP on 17.03.2007 as the down graded ACRs of two years were upgraded to "good" subsequently..

9. The counsel for the applicant has also referred to the judgment of the Hon'ble Supreme Court in **Sukhdev Singh vs. Union of India & Ors., Civil Appeal No.5892/2006 and also Dev**

Dutt vs. Union of India , Civil Appeal No.7631/2002. Both these judgments refer to the fact that before considering the promotion of an employee, any adverse ACRs have to be communicated to the concerned person for his representation against such ACRs and only after getting such reply, the DPC for holding promotion should be held. In fact, in the matter of **Sukhdev Singh vs. Union of India**, the Hon'ble Apex Court have laid down that "it will be open to the appellants to make a representation to the concerned authorities for retrospective promotion in view of the legal positions stated by us."

We, however, need not go deep into the judgments of the Hon'ble Apex Court mentioned supra, but confine ourselves to the fact that as the down graded adverse ACRs of the applicant has been upgraded, subsequently, the eligibility for upgradation of the applicant as on 17.03.2007 has to be considered on the basis of such upgraded ACRs.

10. Hence, it is ordered that the applicant will be given the ACP benefits upon completion of 24 years of service within a period of three months from the date a certified copy of the order is received as she became eligible for promotion/upgradation. The ultimate financial benefits arising out of such ACP benefits shall also take into account the 2nd MACP benefits which were extended to the applicant from 01.09.2008.

The O.A. succeeds. No cost.

(J. Das Gupta)
Administrative Member

(B. Banerjee)
Judicial Member

s.b