

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH
KOLKATA**

OA No. 350/00750/2015

Date of hearing: 09/08/2016

Date of Order : 16/08/2016

Present:

The Hon'ble Ms. Bidisha Banerjee, Judicial Member

The Hon'ble Ms. Jaya Das Gupta, Administrative Member

.....

Shri Pradip Kumar Saha, Son of Late Nanda Lal Saha, aged about 61 years, worked as DEO/Gr.B residing at 13/A, H.L.Sarkar Road, PO Bansdrani, Kolkata-700 070.

.....Applicant

-Versus-

1. The Union of India through the Secretary, Ministry of Home Affairs, North Block, New Delhi-1.
2. The Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, New Delhi-1.
3. The Director, Directorate of Census Operations, West Bengal, Jagannath Bhavan, 1B, 199, Sector-Saltlake City, Kolkatas- 700106.

.....Respondents

For the Applicant : Mr. A.Chakraborty, Counsel

For the Respondents : Mr. B.P.Manna, Counsel

ORDER

MS. JAYA DAS GUPTA, AM:

The Applicant, Shri Pradip Kumar Saha, has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

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"8-a) Office order dated 20/12/2013 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 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 may be quashed;

c) An order do issuer 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 upgraded and the grade good was recorded in the ACR and to grant all consequential benefits;

(Extracted as such)

2. Reply has been filed by the Respondents. Rejoinder has also been filed by the Applicant.

3. Heard the learned counsel for both sides and consulted the records.

4. It appears from the record that the applicant was initially appointed as Operator on 19/01/1984 in the pay scale of Rs.330-560/- and as per the 4th CPC the replacement scale was Rs. 1200-2040/- w.e.f. 01/01/1986. Before commencement of the 5th CPC, the post of Operator was re designated as Data Entry Operator, Gr. B w.e.f. 11/09/1989 in the pay scale of Rs. 1350-2200/-. As per the 5th CPC, the replacement scale was Rs. 4500-7000/- effective from 01/01/1996. As the applicant did not get any promotion, he was given the benefit of first financial

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up gradation under ACP Scheme to the next higher scale of Rs. 5000-8000/- w.e.f. 09.08.1999 i.e. when the ACP scheme came into existence. The replacement scale in the 6th CPC was Rs. 9300-34800/-, GP Rs. 4200/-. He was granted 2nd MACP on 01/09/2008 in the scale of Rs. 9300-34800/- GP Rs. 4600/-. The applicant retired from service on attaining the age of superannuation with effect from 31/01/2014 from the post of Data Entry Operator, Gr. B in the scale of Rs. 9300-34800/-, GP Rs. 4600/-.

5. Allegedly, the applicant was not given the 2nd ACP after 24 years of regular service on 19/01/2008 because of adverse ACRs for not achieving the Bench mark grading for the years 2002-03, 2003-04, 2004-05 and 2008-09. However, it appears from Annexure-A/4 at page 19 of the OA that such grading in the ACRs were upgraded to 'good' from average' which makes him eligible for grant of 2nd ACP. Such order of the authorities dated 07/06/2012 (A/4) is set out below reading reference:

CONFIDENTIAL

"Government of India
Ministry of Home Affairs
Directorate of Census Operations, West Bengal,
Janganana Bhawan
IB, 199, Sector-III, Saltlake City
Kolkata-700106.

File: A-28016/Estt./2006 Gr. (B+C) Part-IV/907
07.06.2012

Date :

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ORDER

Whereas it appears that there is a representation submitted by Sri Pradip Kumar Saha, DEO Gr.B, dated 17.11.2011 and 16.01.2012, in respect of grading in the ACR for 2002-03, 2003-04, 2004-05 and 2008-09 in connection with the letter corresponded to him under COMMONIQUE No. A-28016/Estt./2006 Gr. (B+C) Part-IV/2793 dated 17.11.2011 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 his representation dated 17.11.2011 and 16.01.2012, addressed to the Dy. Director, has stated to re-consider the remarks in the ACR for 2002-2003, 2003-04, 2004-05 and 2008-09 that has jeopardized his carrier prospect to a large extent;

And whereas, it is observed that the ACR of the said official for the period 2002-03 was graded as "Good" by Sri Kamal Kumar Nag, AD(DC), the then Sr. Supervisor but the same had been graded as "Average" on 05.01.2004 by Sri Prabir Kumar Das, ADCO, the then Reviewing Officer, for period 2003-04 was graded as "Average" on 31.12.2004 by Smt Kiran Talukdar, Assistant Director (now retired) of this Directorate as Reporting Officer and Sri R.K.Ram, Joint Director (Presently posted at DCO, Uttarakhand) as Reviewing Officer on 02.06.2005, 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, Joint Director (Presently posted at DCO, Uttarakhand) as Reviewing Officer on 19.06.2006, 2008-09 was graded as "Average" on 12.01.2010 by Sri Gouranga Mohan Chandra, AD(DC), the then Sr. Supervisor as Reporting Officer and Sri Prabir Kumar Das, Assistant Director (now retired) as Reviewing Officer of this Directorate also accorded remark as "Average" on 31.03.2010 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 2002-03 could not be forwarded to the then Reviewing Officer being retired, for the period 2003-04 and 2004-05 could not be forwarded to

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the then Reporting Officer, being retired but the same had been forwarded to the then Reviewing Officer for necessary consideration for up-gradation vide this Directorate letter of even reference No.3666 dated 14.02.2012 and Sri R.K.Ram, JDCO had agreed to upgrade the grading from 'Average' to 'Good' vide DCO, Uttarkhand letter No.110011/57/2007/Estt/709 dated 08.05.2012, that have been made recorded, observed from the record. Further the ACR for the period 2008-09 of the said official had been forwarded to the aforesaid 'Reporting Officer' on dated 17.11.2011 for necessary re-consideration of the ACR grading. The Reporting Officer, Sri Gouranga Mohan Chandra, AD(DC) the then Sr. Supervisor of this Directorate have agreed to change the grading from "Average" to "Good" on the body of the copy of ACR by putting his dated signature as 24.11.2011 but the same could not be forwarded to the Reviewing Officer being retired, that have also been made recorded, observed from the records;

And whereas, the undersigned has also consulted the previous ACRs of the said officials, viz. for the year 2000-01, 2001-02, 2005-06 and 2006-07 and 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 have been upgraded to "GOOD" by the Reviewing Officer in ACR of 2003-04 and 2004-05 and by the Reporting Officer in the ACR of 2008-09 has been made upgraded to 'Good', taking into account the past records of the said official, the grade 'Good' is to be considered as ACR grading of Sri Pradip Kumar Saha, DEO, Gr.B of this office for the year 2002-03, 2003-04, 2004-05 and 2008-09.

Sd/-(D.Ghosh)
Director"

6. It is the contention of the learned counsel for the applicant that even though the ACR grading of the applicant was up graded by the authority concerned, vide order dated

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07.06.2012, the consequential benefits i.e grant of the financial benefit under ACP scheme arising out of such up gradation of the ACR was not granted to the applicant.

7. In the present case, the grievance of the applicant is for not granting him the 2nd financial up gradation under ACP scheme.

It is necessary to examine the service history of the Applicant. As noticed, the applicant joined on regular basis on 19/01/1984. He was granted the first financial up gradation under ACP on 09/08/1989. He was not given the 2nd ACP because of the adverse ACRs of 2002-03, 2003-04 and 2004-05. The DoP&T order dated 13.04.2010, being relevant to the present case, is re produced herein below:

"No. 21011/2010-Estt.A
Government of India,
Ministry of Personnel, Public Grievances
& Pension, Department of Personnel &
Training

North Block, New Delhi
Dated the 13th April, 2010

Sub : Below Benchmark gradings in ACRs prior to the reporting period 2008-09 and objective consideration of representation by the competent authority against remarks in the APAR or for up gradation of the final grading.

The undersigned is directed to say that prior to the reporting period 2008-09 only the adverse remarks in the ACRs had to be

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communicated to the concerned officer for representation, if any, to be considered by the competent authority. The question of treating the grading in the ACR which is below the benchmark for next promotion has been considered in this Department and it has been decided that if an employee is to be considered for promotion in a future DPC and his ACRs prior to the period 2008-09 which would be reckonable for assessment of his fitness in such future DPCs contain final grading which are below the benchmark for his next promotion, before such ACRs are placed before the DPC, the concerned employee will be given a copy of the relevant ACR for his representation, if any, within 15 days of such communication. It may be noted that only below bench mark ACR for the period prior to promotion need be sent. There is no need to serve the benchmark ACRs of other years.

2. As per existing instructions, representation is against the remarks or for up gradation of the final grading given in the APAR (previously known as ACR) should be examined by the competent authority in consultation, if necessary, with the Reporting and Reviewing Officer, if any. While considering the representation, the competent authority decides the matter objectively in a quasi judicial manner on the basis of material placed before it. This would imply that the competent authority shall take into account the contentions of the officer who has represented against the particular remarks/grading in the APAR and the views of the Reporting and Reviewing officer if they are still in service on the points raised in the representation vis-à-vis the remarks./gradings given by them in the APAR. The UPSC has informed this Department that the Commission has observed that while deciding such representations, the competent authorities sometimes do not take into account the views of Reporting/Reviewing Officers if they are still in service. The Commission has further observed that in a majority of such cases, the competent authority does not does not give specific reasons for upgrading the below benchmark ACR/APAR

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gradings at par with the benchmark for next promotion.

3. All Ministries/Departments are therefore requested to inform the competent authorities while forwarding such cases to them to decide on the representations against the remarks or for up gradation of the grading in the APAR that the decision on the representation may be taken objectively after taking into account the views of the concerned Reporting/Reviewing Officer if they are still in service and in case of up gradation of this final grading given in the APAR specific reasons therefor may also be given in the order of the competent authority.

Sd/-(C.A.Subramanian)
Director"

8. From the above, it appears that if an employee is to be considered for promotion in a future DPC and his ACRs prior to the period 2008-09 which would be reckonable for assessment of his fitness in such future DPC contain final grading which are below the benchmark for his next promotion before such ACRs are placed before the DPC, the concerned employee will be given a copy of the relevant ACR for his representation, if any, which he has to answer within 15 days of such communication. The representation is to be decided by the competent authority before taking a final decision. As per the above order of the DoP&T, the applicant was asked to make a representation against the below benchmark grading in his ACRs. The applicant submitted his representation. Based on such representation the adverse entries in his ACRs were up

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graded from **average** to **good** by the competent authority as would be evident from the order dated 07.06.2012, cited supra. Despite the above, it is noticed that the under Secretary, O/O the Registrar General, India, New Delhi, in letter dated 04.02.2014 intimated to the Controller Officer, DCO, West Bengal as under:

"Office of the Registrar General, India
(Government of India, Ministry of Home
Affairs)
2/A, Mansingh Road, New Delhi-110011.

No.32011/04/2013-Ad.IV

Dated: 04.02.2014

To
The Controlling Officer,
DCO, West Bengal.

Sub: Grant of ACP under ACP Scheme – Reg.

Sir,

I am directed to refer to your letter No. A.12122/Estt./2013/2612 dated 20.12.2013 on the subject cited above and to say that Shri Sukumar Mukhopadhaya, Sri Aloke Roy, Sri Tapan Chakraborty, Smt. Puspa Saha, Smt. Purnima Roy, **Sri P.K.Saha** and Sri D.K.Bhattacharya, DEO, Gr. B were assessed by the competent Screening Committee and as their ACR's were below bench mark they were not found fit for ACP from due date. So eligibility of these employees for 3rd MACP falls on completion of 30 years+ deferment period.

Yours faithfully,
Sd/-(Manoj Dehury)
Under Secretary"

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9. In paragraph 4.9 it has been averred by the applicant that one of the employees made an application under RTI Act, 2005 requiring the reason as to why the benefit of ACP shall not be granted even after up gradation of grading in the ACR. She was informed vide office **Order dated 02.12.2014** that cases in which ACRs prior to 2008-09 have been reviewed/ up graded on account of below bench mark grading are not to be considered for grant of ACP in accordance with the DOP&T Memo dated 13.4.2010. The reply is at Annexure-A/7 dated 02.12.2014 is set out hereunder for ready reference:

"Office of the Registrar General, India
(Government of India, Ministry of Home
Affairs)
2/A, Mansingh Road, New Delhi-110011.

No. 34012/36/2014-Ad.IV **dated 02.12.2014**

To
Shri Alok Roy,
10M, Bade Raipur Road,
Anandasally,
PO. Jadavpur University,

Sub: Information under Right to
Information Act, 2005.

I am to refer to your RTI application dated 20.11.2014 received on 25.11.2014 seeking information under RTI Act 2005. **It is informed that the cases in which ACRs prior to 2008-09 have been reviewed/upgraded on account of below benchmark grading are not to be considered for grant of ACP. This is in accordance to the DOPT's OM dated 13.04.2010. Further it is to mention that**

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verdict of the Supreme Court has not yet been passed in the matter.

Yours faithfully,
Sd/-(Manoj Dehury)
Under Secretary to the
Govt. of India & CPIO"

10. We are well aware of the decision of the Hon'ble Apex Court in the case of **Dev Dutt v Union of India and others** reported in (2008) 2 SCC (L&S) 771 – decided on 12.05.2008 and the decision of the larger Bench of the Hon'ble Apex Court in the following cases:

- a. **Abhijit Ghosh Diastidar v Union of India and others** reported in (2009) 16 SCC 146- decided on 22.10.2008;
- b. **Sukhdev Singh v Union of India and others** reported in (2013) 9 SCC 566 – decided on 23.4.2013;
- c. **Union of India v A.K.Goel & Ors**, Appeal Civil No. 2872/2010 decided on 27.11.2014.

Nowhere in the above cited cases, the Hon'ble Apex Court have laid down that all ACRs including adverse ACRs should be communicated to the concerned employees for their representation if the ACRs relates to only from the year 2008-09 and afterwards. In such circumstances, the effect of the decisions of the Hon'ble Apex Court (supra) has to be given

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retrospective effect. We also do not find any such recording in the DOPT's OM dated 13.04.2010 that cases in which ACRs prior to 2008-09 have been reviewed/ up graded on account of below bench mark grading are not to be considered for grant of ACP.

Hence we hold that the decision taken and communicated in letter dated 4.2.2014 and 2.12.2014 is against the law laid down by the Hon'ble Apex Court, cited supra.

11. As the average entries in the ACRs for the years 2002-03, 2003-04 and 2004-05 have been up graded to Good the applicant became eligible for promotion and hence ACP benefits also. Thus, he is entitled to 2nd financial up gradation under ACP after completion of 24 years of regular service on 19/01/2008. Further as he would be entitled to two financial up gradation under ACP, he shall not be entitled to 2nd MACP which has been extended on 01/09/2008. He shall be entitled to third financial up gradation under MACP provided he is otherwise eligible as per Rules. Accordingly, the Respondents are directed to consider grant of 2nd financial up gradation under ACP scheme when the applicant had completed 24 years of service and he is entitled to all consequential financial benefits, minus the benefits already received by him for 2nd MACP. The entire exercise shall be completed by the

Respondents within a period of three months from the date of receipt of certified copy of this order.

12. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.

(Jaya Das Gupta)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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