

CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH, KOLKATA

LIBRARY

O.A. No. 350/01393/2015

Present : Hon'ble Mr Justice Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms Jaya Das Gupta, Administrative Member

Kehari Singh,
Son of Late Shri Govind Singh,
Residing at 392, Block – IC, Salt Lake,
Kolkata – 700 106.

..... Applicant.

Versus

1. Union of India,
Service through Secretary to the
Government of India,
Ministry of Commerce & Industry,
Department of Industrial Policy and
Promotion Udyog Bhavan,
New Delhi – 110 011.
2. Controller General of Patents,
Design and Trade Mark,
Government of India
Office at Boudhik Sampada Bhavan,
1st Floor, S.M. Road, Antop Hill,
Mumbair, Pin – 400 037.
3. Central Public Information Officer,
Office of the Controller General
Patent Design of Trade Mark,
Boudhik Sampada Bhawan,
First Floor, S.M. Road, Antop Hill,
Mumbai, Pin – 400 037.
4. Union Public Service Commission,
Dhlopur House, Shajahan Road,
New Delhi – 110 069.
5. Secretary, Ministry of Personnel,
Public Grievances and Pensions,
Department of Personnel & Training,
3rd Floor, Lok Nayak Bhavan,
New Delhi – 110 003.

..... Respondents.

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For the Applicants : Ms T. Das Gupta, Counsel.

For the Respondents : Ms P. Goswami, Counsel

Date of hearing: 25-08-2016

Date of order: 2.9.2016

ORDER

MS JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

The applicant Shri Kehari Singh has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

"8.a) An order directing the Respondent authorities to consider the representations as forwarded by the applicants in favour of the applicant.

b) To declare the downgraded ACRs of the year 1998-1999 & 2000-2001 written in respect of the applicant to be discarded for all considerations and proceedings as being written under bias & personal prejudice and being violative of article 14 and having become infructuous for all purpose.

c) To quash and set aside the minutes dated 06.10.2006. On the file No. CG/F/5/1(6)(b)/2006 of the Controller General being illegal and bad in law.

d) Direct the respondents to fix seniority of the applicant within the scope of instructions on Inter se seniority of direct recruits and promote as provided by DoPT O.M. No. 35014/2/80-Estt. (D) dated 07.02.1986 and principle laid down by Hon'ble Supreme Court and consider applicant for subsequent promotion from the date his juniors are promoted with all consequential benefits and back wages.

e) Direct respondents to confirm and regularize the Ad-hoc promotion of the applicant to the post of Examiner of Trade Marks w.e.f. 02.08.2001.

f) Direction for payment of arrears of pay and allowance arising out of the above relief with interest @ 12% for which purpose, the Tribunal may calendar time schedule.

g) Any other relief which the tribunal feels appropriate and sufficient in the circumstances of the case with appropriate cost of these proceedings."

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2. It is the submission of the applicant that he joined Trade Mark Registry, Chennai Office under the Controller General of Patent, Designs, Trade Marks & GI as Assistant Examiner of Trade Marks with effect from 18.05.1995 as direct recruit. He was given ad-hoc promotion to the post of Examiner of Trade Marks with effect from 02.08.2001 against the vacant post. However, pursuant to a CBI case he was suspended on 10.12.2002 and subsequently dismissed from service with effect 03.12.2009. The said conviction was set aside by the Hon'ble High Court of Madras pursuant to the order dated 09.04.2013 and the applicant was reinstated in service vide order dated 18.07.2013 and 07.08.2013 treating the intervening period of suspension and dismissal from 10.12.2002 to 17.07.2013 as duty with full pay and allowances.

3. The main grievance of the applicant is that though he had been given adverse below bench mark ACRs they were not communicated to him, for his representations, as a result he has not been considered for promotion from the date his juniors have been promoted. It is his submission that he should be considered for promotion by the DPC because on acquittal he has been reinstated, treating the period from suspension to reinstatement as on duty. It was also his contention that the ACRs for the year 1996-97 and also for the year 2001-02 were purposely held back and not considered by DPC in their proceeding on 06.10.2006. the DPC had intentionally based their assessment on the down graded ACRs written by the same Deputy Registrar at Chennai, Shri M.H.Mahendra. It is the allegation of the applicant that said Sri Mahendra was personally biased and prejudiced against the applicant and he was also not the immediate superior officer of the applicant.

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4. Per contra, it is the submission of the respondent authorities that the applicant was considered for promotion after his acquittal but he was not found fit for promotion by the DPC because his ACRs did not meet the bench mark.

5. Heard both sides; consulted the record.

6. It is seen from Annexure A-2 at page 25 of the O.A that an order dated 18.07.2013 issued from the authorities setting aside the order of dismissal from service. Such order is extracted herein below :

Office of The Controller General
Patents, Designs & Trade Marks
Boudhik Sampada Bhavan, First Floor,
S.M. Road, Antop Hill,
Mumbai – 400037, India.

No. CG/F/KS/CBI/2013/108

Date: 18.07.2013

ORDER

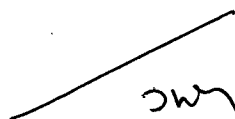
WHEREAS Shri Kehari Singh, Assistant Examiner of Trade Marks was convicted on a criminal charge under Section 7 and Section 13(2) read with 13(1) (d) of Prevention of Corruption Act, 1988 by The Court of Principal Special Judge for CBI cases Chennai, in C.C. No. 30 of 2003 (CBI Case No. R.C. 57 (A)/2002 – Chennai vide Order dated 22nd December, 2006;

AND WHEREAS Shri Kehari Singh was awarded a sentence to undergo rigorous imprisonment for one year each for an offence under Section 7 and Section 13(2) read with 13(1) (d) of Prevention of Corruption Act, 1988 and to pay a fine of Rs. 1,000/- (Rs. One thousand only) each in default to undergo rigorous imprisonment for two months each;

AND WHEREAS appeal made by Shri Kehari Singh against the Order dated 22nd December, 2006 in Hon'ble High Court, Chennai in CRL A 122/2007 was admitted, sentence of imprisonment suspended and bail granted vide Order dated 01/02/2007;

AND WHEREAS in exercise of the powers conferred by Rule 19 (i) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the Disciplinary Authority imposed the major penalty of dismissal from Government service on Shri Kehari Singh, Assistant Examiner of Trade Marks (under suspension) w.e.f. 03/12/2009.

AND WHEREAS the conviction and sentence imposed on Shri Kehari Singh, Assistant Examiner of Trade Marks & GI is set aside by the



Hon'ble High Court, Madras vide Order dated 09.04.2013 in Crl. A.No. 122 of 2007 on merits of the case;

AND WHEREAS a request letter dated 16.05.2013 of Shri Kehari Singh, Assistant Examiner of Trade Marks & GI to reinstate him was received in this office;

AND WHEREAS a letter dated 06.06.2013 from this office was sent to Central Bureau of Investigation, Anti-Corruption Branch, Chennai to communicate objection if any against the proposed action to reinstate him;

AND WHEREAS Central Bureau of Investigation, Anti-Corruption Branch, Chennai vide letter No. C7/RCS7/02/CBI/ACB/CHEN/45 dated 18/06/2013 has stated to take action with regard to the judgment of the Hon'ble High Court, Madras;

AND WHEREAS the penalty of dismissal was imposed on Shri Kehari Singh, Assistant Examiner of Trade Marks & GI w.e.f. 03.12.2009 on the ground of conduct which led to his conviction on a criminal charge and the said conviction has now been set aside by the Hon'ble High Court of Madras;

NOW, THEREFORE, the undersigned hereby sets aside the order of dismissal from service. Separate order is being issued regarding admissibility of pay and allowances and treatment of service for the period of suspension and dismissal.

Shri Kehari Singh, Assistant Examiner of Trade Marks & GI is posted at Trade Marks Registry, Kolkata.

(Chaitanya Prasad)
Controller General of Patents,
Designs & Trade Marks"

Another order issued on 07.08.2013 treating the period of suspension preceding the dismissal to the date of reinstatement, as on duty, with full pay and allowances, which is also reproduced below :

"Office of The Controller General
Patents, Designs & Trade Marks
Boudhik Sampada Bhavan, First Floor,
S.M. Road, Antop Hill,
Mumbai - 700037, India.
No. CG/F/KS/CBI/2013/76

Dated: 07.08.2013

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ORDER

WHEREAS the penalty of dismissal was imposed on Shri Kehari Singh, Assistant Examiner of Trade Marks & GI w.e.f. 03.12.2009 on the ground of conduct which led to his conviction on a criminal charge;

AND WHEREAS the conviction and sentence imposed on Shri Kehari Singh Assistant Examiner of Trade Marks & GI is set aside by the Hon'ble High Court, Madras vide Order dated 09.04.2013 in CrI. A. No. 122 of 2007 dated 01.02.2007 on merits of the case;

AND WHEREAS the Order of reinstatement of Kehari Singh has been issued vide this office Order No. CG/F/KS/CBI/2013/108 dated 18.07.2013;

NOW, THEREFORE, the period intervening between the date of dismissal including the period of suspension preceding such dismissal and the date of reinstatement shall be treated as duty for all purpose and he shall be paid the full pay and allowances for the period, had he not been suspended prior to such dismissal.

Chaitanya Prasad)
Controller General of Patents,
Designs & Trade Marks"

7. On reinstatement the applicant found that his juniors are being promoted, while his case for promotion was not been considered. He preferred a representation on 17.09.2014 at Annexure A-6, relevant portion of which is set out below :

"To,

The Controller General of Patent, Designs, Trade Marks & G.I.
O/o the Controller General of Patents, Designs & Trade Marks & G.I.
Bhoudhik Sampada Bhavan, Antop Hill, S.M. Road, Mumbai – 400 037

(Through Proper Channel)

Sub: Representation for up gradation of below bench mark ACR assessment for the year 1998-1999, 1999-2000, and 2000-2001 as provided vide DOPT OM NO. 210111112010-Estt.A dt. 13th April, 2010.

Dear Sir,

With due respect, I hereby make representation and request that below bench mark assessment in my ACR's for the year 1998-1999, 1999-2000, and 2000-2001 may be reviewed and up graded to meet the

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requirement for the promotion as provided vide DOPT OM NO. 210111112010-Estt.A dt. 13th April, 2010.

In this regard I put forward following facts for your kind consideration:-

That I joined Trade Mark office, Chennai, as Asst. Examiner of Trade Marks w.e.f 18.5.1995 as direct recruit and was working in substantive capacity in that post till I was suspended on 10.12.2002 and subsequently dismissed w.e.f. 03.12.2009 on conviction by CBI court. On my acquittal in appeal by the High court Madras, I was reinstated in service vide C G office order No. CG/F/vig/ks/CBI/ 2013/108 dt 18.7.2013 with continuity of service & full pay & allowances vide order No. CG/F/ks/CBI/2013/76 dt-07.08.2013.

That I am in receipt of my DPC assessment during the year 2006 and copies of my ACRs for the year 1998-1999, 1999-2000, and 2000-2001 through my Head of office on 16.09.2014 which are below the bench mark for the promotion. From the chronology of the ACRs, it is evident that my ACRs are downgraded purposely from the year 1999 onwards, My ACR for the year 1997 is good & for 1999 very good. And I am sure that ACR for the previous years were also good. Close look at my below bench mark ACRs will reveal that all of them are written by only one officer Shri M.H Mahendra than Deputy Registrar of Trade Marks at Chennai.

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That this most likely prejudiced shri M.H. Mahendra against me and he wrote all my subsequent ACRs, in same tone and tenor subjectively, without any justification and material facts, giving me overall grading of average which is below the bench mark of promotion, cleverly avoiding any adverse remarks lest his mala fide be exposed. This is supported by the remarks of reviewing Officer Shri K.K. Sharma in my ACR for the year 1999-2000, where he has clearly written that – "allegations are wild without any supporting material" "It is not objective assessment" "& seems to have been based upon personal prejudices".

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In the year 2001 I was given ad hoc promotion to the post of Examiner of Trade Marks by the competent authority and I work as adhoc Examiner of Trade Marks till December 2002. If something was doubtful, inefficient, or wrong about my assessment in the eyes of the competent authority they would have definitely conveyed it to me or at the most would have not given me the Ad hoc promotion.



I have already suffered for a long period for a false and planted trap by the CBI and planned prejudices at the hand of the then concerned officer of the Trade Marks Registry, Chennai. It will be just and equitable if all ACRs written by Shri M.H. Mahendra for the year 1998-1999, 1999-2000 and 2000-2001 are discarded, discounted and upgraded to grading to meet the bench mark for promotion. I crave leave for personal Interview with the Controller General to further personally present evidence to support my contentions.

In view of the above I hereby request that in view of my submissions and in view of the remarks of the reviewing officer against the report writing of Shri M H Mahendra Lacking objective assessment and my exoneration by the honourable High court in CBI case, all of my ACRs written by Shri M.H Mahendra may please be reviewed and upgraded to meet the bench mark for the promotion

Yours Faithfully

(Kehari Singh)"

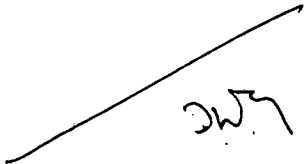
The authorities vide their letter dated 02.10.2014 issued an office order after considering his representation and gave the reasons why the applicant could not be promoted after consideration of ACR 1998-1999, 1999-2000 and 2000-2001, which is extracted below :

"No. CG/F/(P)(A.Ex)/KS/2014/29

Date: 02.10.2014

The representation dated 17.09.2014 submitted by Shri Kehari Singh, Assistant Examiner of Trade Marks, Trade Marks Registry, Kolkata in respect of upgradation of ACRs for the periods of 1998-1999, 1999-2000 and 2001-2002 has been considered by the undersigned and following has been decided:

- (i) The ACR of 1998-1999 has been reported but not reviewed. In the absence of remarks by the Reviewing Officer, the remarks of Reporting Officer is treated as final hence, there is no scope for any change in the grading.
- (ii) The ACR of 1999-2000 has been reported and reviewed. The Reviewing Officer commented that he was not satisfied with the reporting and did not agree with the Reporting Officer but the Reviewing Officer did not upgrade the ACR. In view of conflicting remarks of the Reporting Officer and the Reviewing Officer, it is decided that the ACR for the period of 1999-2000 shall be disregarded for any consideration and proceedings.
- (iii) The ACR of 2000-2001 has been reported and reviewed. The Reviewing Officer agrees with the report submitted by Reporting Officer and

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therefore the grading is treated as final. There is no scope for any change in the grading.

The representation dated 17.09.2014 submitted by Shri Kehari Singh for upgradation of ACRs for the periods of 1998-1999, 1999-2000 and 2000-2001 is disposed off accordingly.

(Chaitanya Prasad)
Controller General of Patents,
Designs & Trade Marks"

8. However, on examining such findings of DPC it is apparent that there are fallacies based on which the DPC had taken the decision of the applicant regarding promotion. The decisions suffer from the following deficiencies :

- i) None of the ACRs have been accepted by the Accepting Authority.
- ii) ACR for the year 1998-1999 is a one man ACR not being reviewed and hence cannot be considered by the DPC at all.
In that regard the relevant portion of the status of one man ACR report as issued by Cabinet Secretariat is set out below :

"CS OM No.51/5/72-Estt.(A) dated 20.5.1972, Para 7 prohibits consideration of such ACRs which has been written one level only. The said O.M stipulates as follows:

"In order to minimise the operation of subjective human elements and all conscious or unconscious bias, the confidential report of every employee should contain the assessments of more than one officer, except in cases where there is only one supervisory level above the officer reported upon."

The Hon'ble Apex Court has held that there should be an officer higher in rank above the officer who had written the confidential report to review such report ; ***SBI vs. Kashinath Kher, AIR 1996 SC 1328.***

(iii) The reasons for non availability of ACRs for 1996-1997 and 2001-2002 have not been given.

Moreover, in para 5(vi) of the pleadings the applicant has alleged that the authorities had purposely held back the ACR for 1996-97 and 2001-02.

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In addition to the short comings of the ACRs being considered the main grievance of the applicant that down graded below bench mark ACRs had not been sent back to him for his representation before holding the DPC, has not been addressed. It is well settled that Hon'ble Apex Court in *Dev Dutta vs Union of India & Ors. reorted in (2008) 2 SCC (L&S)* (2 Judge Bench), *Abhijit Ghosh Dastidar vs Union of India & Ors. Reported in (2009) 16 SCC 146* (3 Judge Bench), *Sukhdev Singh vs Union of India & Ors.(3 Judge Bench) Reported in (2013) 9 SCC 566* and *Union of India vs A.KGoel & Ors.,(3 Judge Bench) Appeal Civil No. 2872/2010* disposed of on 27.11.2014, has emphasised time and again the stipulation that a person must be given a chance to represent against adverse ACRs as otherwise the principle of natural justice will be violated.

9. In view of such findings it is directed that the respondent authorities shall convey all the adverse ACRs to the applicant within 3 weeks after getting a certified copy of this order, giving the applicant a month time to represent against such adverse ACRs. After considering his representation, if the respondent authority think that there are grounds for upgrading of such ACRs, then such ACRs will be upgraded and a review DPC be held for consideration of such upgraded ACRs. In case the applicant is promoted all consequential benefits be extended to him. The whole exercise from considering the representations of the applicant to the finalisation of the review DPC proceeding, (if it is decided a review DPC will be held), shall be completed within 4 months from the date of communication of this order.

10. The O.A is accordingly disposed of with the above directions. No costs.

(Jaya Das Gupta)
Administrative Member

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(Justice V.C.Gupta)
Judicial Member