



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/01875/2015

Date of order: 20.02.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

T. Mang Min Thang,
Son of T. Vung Thang,
Aged about 45 years,
Working as Director of Postal Services,
Kolkata Region, Yogayog Bhawan,
Kolkata - 700 012,
Residing at Qtr. No. 60, Section 10,
1, Belvedere Estate, Alipur,
Kolkata.

Applicant.

-Versus-

1. Union of India,
through the Secretary,
Government of India,
Ministry of Communication & IT,
Department of Post & (Personnel Division),
Dak Bhawan, Sansad Marg,
New Delhi - 110 001.
2. The Director (Staff),
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi - 110 001.
3. The Chief Postmaster General,
Yogayog Bhawan,
C.R. Avenue,
Kolkata - 700 012.
4. Col. Subhas Chandra (IPoS-1995),
on deputation to APS.
5. Sri G.V. Sawaleshwarkar (IPoS-1995),
PMG, Pune Region,
Maharashtra Circle.

.....Respondents.

For the Applicant : Mr. A. Chakraborty, Counsel
Ms. P. Mondal, Counsel

For the Respondents : Mr. B.B. Chatterjee, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

Aggrieved at not being promoted to SAG vide promotion order dated 17.7.2015 of the respondent authorities, the applicant has prayed for the following relief:-

" An order do issue directing the respondents to convene review DPC and grant the applicant promotion from Junior Administrative Grade to regular Senior Administrative Grade Officer of Indian Postal Service Group 'A' with effect from the date private respondents were promoted and to grant all consequential benefits."

2. Heard both Ld. Counsel, examined pleadings and documents on record.
3. The submissions of the applicant, as articulated through his Ld. Counsel, is that the applicant, a Director of Postal Services, Kolkata Region belongs to 1994 Batch of the Indian Postal Service 'Gr. A'. The applicant had received his Senior Time Scale Promotion in 1999, was promoted to Junior Administrative Grade (JAG) in 2005 (Ad-hoc), as regular JAG in 2006 and, thereafter, received his Non-Functional Selection Grade (NFSG) in 2007.

That, the applicant was in the zone of consideration for promotion from JAG to SAG (PMG) and, although a DPC for SAG was held on 22.4.2015, in the promotional order issued by the respondent authorities on 17.7.2015, consequent to the same, the applicant was not included in the said promotion order although his juniors in Batches 1995 and 1996 were promoted therein, thereby superseding him. The applicant has challenged the decision of the respondent authorities on grounds of procedural fairness, non-receipt of weightage for serving full tenure in North East Circle and for not being considered and accorded equal opportunity for promotion.

4. Per contra, the respondents have argued that the applicant, an Officer of the 1994 Batch of Indian Postal Service Gr. 'A' was promoted to Senior Time Scale on 5.5.2000, adhoc JAG on 5.9.2005, regular JAG w.e.f. 17.4.2006 and granted NFSG on 1.1.2007.



That, the DPC for promotion from JAG to SAG for the supplementary vacancies for the year 2014-2015 and regular vacancies for the year 2015-2016 was held on 22.4.2015 and the applicant was also in the zone of consideration in the said DPC. The DPC, however, assessed his ACR/APAR for 2008-2009 as "good" and, accordingly, decided not to recommend him for SAG during the years for consideration. Subsequently, the recommendations of the DPC were approved by the Appointments Committee of the Cabinet on 7.7.2015, and in the promotion orders issued on 17.7.2015, the applicant was not included and was not promoted to SAG.

5. The issue before us is whether procedural fairness was observed in ascertaining the ACR/APAR gradings of the applicant and subsequent denial of promotion vide DPC's recommendations consequent to its meeting dated 22.4.2015.

6.1. At the outset, it is noted that the respondents have not referred to the years for which the ACR/APARs of the applicant was taken into consideration in the said DPC. The Minutes of the meeting of the DPC held on 22.4.2015 (as annexed to the reply of the respondents) and, particularly, paras 6 to 9.2 are extracted below as herein:-

"Minutes of the meeting of the Departmental Promotion Committee held on 22nd April, 2015 at 11:00 AM in the office of the Union Public Service Commission at New Delhi.

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6. The Committee were also informed that, in accordance with the instructions contained in para 6.3.1 of the DOP&T-O.M. 22011/5/86-Estt. (D), dated 10.04.1989, read with subsequent O.M. No. 22011/5/91-Estt.(D) dated 27.3.1997 and O.M. No. 35034/7/97-Estt(D) dated 08.02.2002, the bench mark for promotion in the present Case is "VERY GOOD".

7. The Government, however, vide DOP&T O.M. No. 22011/3/2007-Estt.(D) dated February 18, 2008 decided that for promotion to the posts in the pay scale of Rs. 18400-22400/- (pre-revised) and above, the prescribed bench-mark of "Very Good" is invariably met in all ACRs of five years under consideration and that this procedure would come into force from the panel year 2008-09.

8. Attention of the Committee were also invited to the instructions contained in DOP&T O.M. No. 35034/7/97-Estt.(D) dated 8.2.2002, which inter-alia provides that "the DPC shall determine the merit of those being assessed for promotion with reference to the prescribed bench mark and accordingly grade the officers as "fit" or "unfit". Only those who are graded "fit" (i.e. who meet the prescribed bench mark) by the DPC shall be included and arranged in the select panel in order of their inter-se seniority in the feeder grade. Those officers who are graded "unfit" (in terms of the prescribed bench mark) by the DPC shall not be included in the select panel. Thus, there shall be no

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supersession in promotion among those who are grade "fit" (in terms of the prescribed bench mark) by the DPC."

9.1. The Departmental Promotion Committee accordingly assessed the character rolls of the eligible officers.

9.2. While assessing the ACR for the year 2008-09 in respect of Shri T. Mangminthang, the Committee observed that the ACR for the year is written in two parts, i.e. from 1.4.2008 to 6.12.2008 and 7.12.2008 to 31.3.2009. In the first part i.e. from 1.4.2008 to 6.12.2008, the reporting officer has assessed Shri T. Mangminthang as 'Good' whereas he reviewing authority has upgraded it to 'Very Good' without assigning any reason. It was also noted that the reviewing authority in Column 3 has stated that 'I agree' with the assessment of the officer given by the reporting authority. In the ACR for the latter part i.e. from 7.12.2008 to 31.3.2009, the reporting officer has recorded that the officer was on long medical leave and therefore, no comments for the period. In view of the above, the Committee assessed his ACR for the year 2008-2009 as 'Good' and decided not to recommend him for promotion during the years under consideration."

From the above, it is deciphered that the applicant was not considered for promotion on the basis of his grading in the ACR/APAR for 2008-2009 as 'good'. As no comments has been made on the ACRs/APARs for remaining four years under consideration, and as the respondents have not stated anything to the contrary, it would be presumed that the applicant would have met the bench mark for promotion namely "very good" in his remaining ACRs/APARs. The applicant has also annexed his ACR/APAR for 2009-2010 onwards (Annexure A-2 colly. to the O.A.) in which he has been graded as "outstanding" (numerical score 8.10 by the reporting authority); in 2010-2011 he has been graded as "outstanding" by the reviewing authority (Numerical score 8), though his filled in APAR for 2011-2012 is not on record, once again, for the year 2012-13, he has been graded as "very good" by the reviewing authority and in 2013-14 he was further graded as "very good" by the reviewing authority.

Accordingly, we can infer that; but for the APAR of 2011-2012 which is not on record in the pleadings, the applicant was either graded as "very good" or "outstanding" in all the remaining four years. In the year 2008-2009, he was graded as "good" by the reporting authority and "very good" by the reviewing authority. It also transpires that the DPC did not agree to accept the improved grading of the reviewing authority and retained the original grade of the reporting authority on the ground that the reviewing authority had not specified any grounds for upgrading the APAR of the applicant and also, that although the

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reviewing authority in Column 3 had stated that he had agreed with the **assessment given by the reporting authority, he changed the grades** from "good" to "very good" without assigning any reasons. Interestingly, in the applicant's APAR of 2010-2011, we find the reporting authority had given him a "numerical grade of 7" but the reviewing authority improved it to "8" and again in the relevant column, while responding to the query as to whether the reviewing authority was satisfied with the reporting authority's report, the reviewing authority had averred "Yes, I agree". What is of further interest is the fact that in response to the query as to whether, if, in case of difference with the reporting authority, the specific area of difference with the assessment made by the reporting officer and reasons, thereof, were to be quoted, the reviewing authority had noted "no difference". Herein, the reviewing authority had also improved the numerical grade from "7" to "8" but the DPC did not comment upon this improvement that was recorded without assigning reasons thereof.

6.2. Next, we refer to the applicant's APAR for 2008-2009 which has been recorded for the period 1.4.2008 to 6.12.2008 and the remaining period, namely, from 7.12.2008 to 31.3.2009 has not been taken up by the reviewing authority stating that the period is too short for his observations as the applicant was on long medical leave. We consider it necessary to examine the comments of the reporting authority and the ACR of 2008-2009 in detail and reproduce below the relevant extracts therefrom with supplied emphasis:-

"PART III TO BE FILLED IN BY THE REPORTING AUTHORITY

(Please read carefully the instructions given at the end of the form before filling the entries)

A. Nature and quality of work.

1. Please comment on Part II as filled by the officer and specifically state whether you agree with the answers relating to targets and objectives, achievements, shortfalls and constraints.

I agree. The officer **did show a reasonable progress in achieving the targets.**

2. Quality of output:-

Please comment on the officer's quality of performance having regard to standard of work and programme objectives, and constraints, if any.

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The officer is making **sincere effort to standardize his work.**

3. Knowledge of sphere of work –

Please comment specifically on each of these level of knowledge of functions, related procedures, instructions and their application.

The officer is knowledgeable in the matter of rules and procedures and tried his best to implement them effectively.

B. Attributes

Attitude to work-

Please comment on the extent to which the officer is dedicated and motivated and or his/her willingness and initiative to learn and systematize his/her work.

The officer is motivated and makes sincere efforts to systematize his work.

2. Decision making ability –

Please comment on the quality of decision-making and on ability to chalk out alternatives and weigh their pros and cons.

The officer can apply his mind to any problems and take proper decisions.

3. Initiative -

Please comment on the capacity and resourcefulness of the officer in handling unforeseen / difficult situations on his/her own and willingness to take additional responsibility and new areas of work.

The officer is very resourceful and was able to handle any situation. He was able to hold additional charge of other Divisions too.

4. Ability to inspire and motivate

Please comment on the capacity of the officer to motivate, and inspire confidence

The officer is motivated and can inspire confidence among his staff.

5. Communication skill (written and oral) – very good

Please comment on the ability of the officer to communicate and on his/her ability to present arguments.

Very good.

6. Inter-personal relations and team work-

Please comment on the quality of relationship with superior, colleagues and subordinates and on the ability to appreciate other's point of view and take advice in the proper spirit. Please also comment on his/her capacity to work as a member of a team and to promote team spirit and optimize the output of the team.

The officer is polite to superiors and colleagues, he is able to appreciate others points of view and takes advice in good spirit. He can motivate his team and get the best from each of the team members.

7. Relations with the public.

Please comment on the officer's accessibility to the public, and his/her responsiveness to their needs and his/her ability in dealing with them in a proper manner.

Accessible to the public and quite responsive to their needs.

8. Attitude towards Scheduled Castes/Scheduled Tribes /Weaker Sections of Society:-

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Please comment on his/her understanding of the problems of Scheduled Castes/Scheduled Tribes/Weaker Sections and willingness to deal with them.

Fair and Just.

XXXXXXXXXX

3. Coordination ability:-

Please comment on the extent to which the officer is able to achieve coordination in formulation and implementation of tasks and programmes by different functionaries involved.

Satisfactory.

XXXXXXXXXX

GENERAL

PART-IV

1. State of Health-

Fit.

2. Integrity-

Nothing adverse known.

3. General assessment

Please give an overall assessment of the officer with reference to his/her strength and weaknesses and also by drawing attention to the qualities, if any, not covered by the entries above.

The officer was undergoing some personal problems, but he made effort to control the Dn (illegible). He was requested to counseling.

4. Grading

(Outstanding/Very Good/Good/Average/Below Average) (An officer should not be graded outstanding unless exceptional qualities and performance have been noticed; grounds for giving such a grading should be clearly brought out.

Good

Place: Shillong

Signature

Sd/-

Date: 11th Dec/08

Name in Block Letter M. IAWPHNIAW

Designation : PMG NE

(During the period of Report)"

The reporting authority has described the performance of the applicant concerned with the following attributes:

- The officer did show a remarkable progress in achieving the targets;
- The officer is making sincere effort to standardize his work;
- The officer is knowledgeable in the matters of rules and procedures and tried his best to implement them effectively.

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- d) The officer is motivated and makes serious efforts to systematize his work.
- e) The officer can apply his mind to any problems and take proper decision.
- f) The officer is very resourceful and was able to handle any situation. He was able to hold additional charge of other Divisions too.
- g) The officer is motivated and can inspire confidence among his staff.
- h) The officer's communication skills have been rated as "very good"
- i) The officer has been noted as polite to superiors, colleagues and subordinates.
- j) It is also stated by the reporting authority that the officer is accessible and responsible, is fair and just to Scheduled Caste, Scheduled Tribes and Weaker Sections of the Society and that he has a satisfactory record of coordination ability.

As all the narrated attributes are synonymous with the category of "very good" / "outstanding", when translated into a composite adjective, such attributes can realistically be summarized as "very good". The reporting authority's grading of the applicant's performance as "good" contradicts the eulogization of the applicant/official in superlative terms while noting his comments on the applicant/officer's performance.

6.3. Next we come to the remarks of the reviewing authority, particularly, in the context of paras 3 and 4 of the same:

"3. Do you agree with the assessment of the officer given by the reporting authority? (In case of disagreement, please specify the reasons.) Is there anything you wish to modify or add?"

I agree

4. General remarks with specific comments about the general remarks given by the reporting authority and remarks about meritorious work of the officer including the grading.

Very good officer"

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When the reviewing authority had agreed with the assessment of the reporting authority, the reviewing authority, in all fairness, must have referred to the entire narrative of the reporting authority and it was a logical conclusion that an officer, who was stated to have made remarkable progress in achieving targets, who is sincere, motivated, knowledgeable, resourceful, decisive, with very good communication skills and amiable personality, deserves to be graded as "very good". It would have been sheer shortsightedness on the part of the reviewing authority to only concentrate on the grading as at para 4 of the reporting authority and not to the background material leading to such a conclusion.

Hence, in our opinion, there were ample reasons of the applicant/official to be graded as "very good" and, as the reviewing authority appears to be the accepting authority in the case of the applicant, the reviewing authority's judgment and grade ought to have been taken to be as final by the DPC.

6.4 The respondents have highlighted the following provisions of DOPT's O.M. No. 22011/5/86-Estt. (O), dated 10.4.89:-

- (i) "6.1.2 – The DPCs enjoy full discretion to devise their own methods and procedures for objective assessment of the suitability of candidates who are to be considered by them."
- (ii) "6.1.3 – While merit has to be recognized and rewarded, advancement in an officer's career should not be regarded as a matter of course, but should be earned by dint of hard work, good conduct and result oriented performance as reflected in the ACRs and based on strict and rigorous selection process."
- (iii) "6.2.1 (b) – The DPC should assess the suitability of the officers for promotion on the basis of their service record and with particular reference to the CRs for preceding five years, which became available during the year immediately preceding the vacancy panel year."

The contents of the O.M. are summarized as under:

- (a) The DPC will devise their own method and procedures for objective assessment.

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(b) Advancement of an officer's career should be earned by dint of hard work, good conduct and result oriented performance.

The applicant's ACR/APAR for 2008-2009 refers to his hard work, his good conduct and the fact that he achieved the targets.

(c) The CRs for preceding five years should be assessed as summarized above. The officer had received "very good"/"outstanding" CR for each of the four years [barring 2011-2012 which is not on record]. The respondents have not disputed that any of the ACRs/APARs of the applicant, except that of 2008-2009 had indeed met the bench mark.

6.5 Hereinafter, we seek guidance from judicial pronouncements of the Hon'ble Apex Court to decide on the scope of judicial review in the matter of confidential reports / APARs:

In *U.P. Jal Nigam v. Probhat Chandra Jain*, (1996) 2 SCC 363 it was held that, where an entry is a downgrading entry such as "outstanding" in a particular year but a satisfactory entry in the succeeding year, it could be considered as adverse. The ACR/APAR of 2007-2008 was not produced before us. If the applicant was graded as "very good"/"outstanding" in 2007-2008, the ACR/APAR of 2008-2009 which graded him as "good" ought to have been conveyed to him.

The Hon'ble Apex Court in *Brij Mohan Chopra v. State of Punjab* 1987 (2) SLR 54 (SC) has held that the general principle is that although the entire service record of the employee is to be considered, the service records of the immediately preceding ten years should provide a just and reasonable guideline.

In *Biswanath Prasad Singh v. State of Bihar*, (2001) 2 SCC 305, it has been observed that the entry in ACR/APAR Confidential Reports must reflect the result of an objective assessment. Fairness, justness and objectivity are the real criteria of making such entries.

The Hon'ble Apex Court has further held in *S. Ramachandra Raju v. State of Orissa*, JT 1994 (5) SC 459 that, writing the confidential reports

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objectively and constructively and communication thereof at the earliest, would pave way for amends by erring subordinate officer or to improve the efficiency in service.

Accordingly, after having ascertained the facts as well as the points of law involved in this matter, we are of the considered view that the recommendations made by the DPC in its meeting dated 22.4.2015 in the case of the applicant did not meet the standards of fairplay, objectivity and justice. The decision of the reviewing authority ought to have been taken as final and the only reason for rejecting the decision of the reviewing authority as not being supported by reasons, seems to have been ignored while appraising the applicant's ACR of 2010-2011 which stood upgraded by the reviewing authority without attributing reasons thereof.

7. We hence, deem it fit to direct the respondents to place the ACRs/APARs of the applicant/official before a review DPC who should once again examine the entries in the applicant's APARs from 2008-2009 and four consecutive years as applicable so as to arrive at a fair decision, particularly, in the context of his ACR/APAR of 2008-2009. In case, a favourable recommendation is received in the review DPC, the applicant's promotion which, admittedly, has been granted to him in the SAG vide respondents' order dated 23.2.2017, will require to be antedated suitably.

The entire exercise may be completed within twelve weeks from the date of receipt of a copy of this order and the outcome is to be communicated to the applicant immediately upon concluding on the same.

8. This O.A. is allowed to the extent of the above observations. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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