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CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH KOLKATA

O.A.No. 116/2013

Date of Order : 01-09-2015

Present : **Hon'ble Mr Justice G. Rajasuria, Judicial Member**
Hon'ble Ms Jaya Das Gupta, Administrative Member

Dr. Alok Vajpayee, son of late
Ganesh Prasad Vajpayee aged about 55 years,
Professor, Public Health, All India Institute of
Hygiene & Public Health, office at 110, C.R.Avenue,
Calcutta-700 073.

.....Applicant

-Versus-

1. The Union of India,
Service through the Secretary to the
Govt. of India, Ministry of Health and
Family Welfare, Nirman Bhawan,
New Delhi -110011.
2. The Director General of Health Services,
Office at Nirman Bhawan,
New Delhi -110011.
3. The Director,
All India Institute of Hygiene & Public Health,
office at 110, C.R.Avenue,
Calcutta-700 073.

.....Respondents

For the applicants : Mr S. Samanta, Ms M.Roy, Counsel
For the respondents : Mr L.K.Chatterjee, Mr U.P.Bhattacharyya,
Counsel

ORDER (ORAL)

JUSTICE G.RAJASURIA, JM,

Heard Both. This O.A has been filed seeking the following reliefs :

"(a) Direction do issue directing the respondent authorities to grant promotion to the applicant, Professor of teaching specialist sub cadre of CHS, to the grade of Director Professor under DACP scheme notionally with effect from 29.10.2008 and actually from the date of resumption of the charge of the SAG level post by his similarly circumstanced incumbents along with all consequential benefits;
(b) Direction do issue setting aside and quashing the memo dated 08.12.2011 being Annexure A-11 hereto;
(c) Declaration do issue declaring that the non-upgradation of the ACR of the applicant for 2003-2004 was illegal and void and the applicant was entitled to



promotion to the grade of Director Professor under DACP scheme notionally with effect from 29.10.2008 and actually from the date of resumption of the charge of the SAG level post by his similarly circumstanced incumbents along with all consequential benefits irrespective of the said ACR;

(d) A direction do issue upon the respondents to produce and/or cause to be produced the entire records of the case and upon such production being made no render conscionable justice by passing necessary orders thereon;

(e) Cost and costs incidental hereto;

(f) And / or to pass such other or further order or orders as to your Lordships may seem fit and proper;"

2. The nitty gritty, the gist and kernel of the germane facts absolutely necessary for the disposal of this O.A would run thus :

The applicant is presently working as Professor in All India Institute of Public Health and Hygiene, Kolkata. Indubitably and indisputably his juniors were given the benefit of Dynamic Assured Career Progression (DACP) by order dated 31.8.2010 with effect from 2008. However, the applicant was deprived of the same on the main ground that out of the 5 ACRs to be considered for promotion and extending the benefit of DACP, the applicant was having only two ACRs with the remarks to write "very good" which happened to be the bench mark for conferring the benefit of DACP. This fact was conveyed to him on his representation. Subsequently, he petitioned the appropriate authority for upgrading the remaining three ACRs from the grade of "Good" to "Very Good. After considering" the same out of the said 3 years remarks for two years he got upgraded his ACRs as "Very Good", however in respect of the year 2003-04, his prayer for upgrading the remarks from good to very good was negatived by a cryptic order dated 8.12.2011 by the Ministry of Health & Family Welfare, Government of India and it is extracted hereunder for ready reference :

"Subject: Representation of Dr. Alok Vajpayee for reconsideration of his below benchmark ACR for 2003-04. - reg.

The undersigned is directed to refer to letter No. E.7-8/2011 dated 12.08.2011 on the subject mentioned above and to say that the representation of Dr. Alok Vajpayee has been considered in this Ministry.

2. The competent authority is of the view that, there is no valid ground emerged to reconsider the below benchmark ACR for the period of 2003-04 in respect of Dr. Alok Vajpayee."



Being aggrieved by and dissatisfied with the same, the applicant filed this O.A seeking the aforesaid reliefs. Learned counsel for the applicant placing reliance on the averment made in the O.A would pyramid his argument which would succinctly and precisely run thus :

The applicant by his representation dated 4.8.2011 set out the various grounds which were ignored while assessing his ACR for the year 2003-04 and an excerpt from it, is extracted hereunder for ready reference :

"(ii) The reporting officer has mentioned under the heading "general' remarks (please make any general comments)" in the ACRs that I am "a good teacher". This shows that he regards me as a good teacher. Since I am working in a teaching post I think this is praise for my teaching abilities.

(iii) The reporting officer has mentioned that he agrees with whatever I have written in self appraisal (please see page no.5, item I in the ACR). Therefore, I again request the ministry to please go through myself appraisal and make its own unbiased judgement on grading.

(iv) During the year 2003-04 I was Head of the department of Occupational Health and Course Director of Diploma in Industrial Health (DIH) course (please see my ACRs page no.2 & 4). Out of 8 sanctioned teaching posts in the department, 4 were vacant during the period. I took more classes to compensate for the vacant post. All over India DIH course is presently conducted only in this Institute and we have a great responsibility to provide trained public health manpower to Indian industries.

(v) I was Chairman of one and member of two important committees of this Institute during this period (please see page No.2 of my ACR). This clearly shows that I was continuously involved in the administrative assignments also.

(vi) I was continuously involved in the regular teaching, academic and professional work (please see page no.3 of my ACRs) like-taking classes regularly and guiding MD thesis and diploma dissertation of post graduate students.

(vii) During the year 2003-04 I had two publications to my credit. Please see Page No.3, Item No (iv) in my ACR.

(viii) In the year 2003-04, my expertise and teaching abilities were utilized by the other institutions also. I was resource person and examiner for Associate Fellow of Industrial Health course organized by the Ministry of Labour, GOI. (Please refer to page No.2 of the ACR)

(ix) I was actively involved during the year 2003-04 with the oldest professional body in the field of Public Health in India – Indian Public Health Association (IPHA). I was elected as Treasurer of IPHA for a period of 2 years (2003 and 2004)

(x) I did not receive any warning/suggestions or any other written or verbal communication from Prof. Ananthanarayanan (my Reporting Officer) during his entire tenure as Director, AIH&PH, Kolkata; indicating that he wants improvement in my functioning. In fact I was always assigned challenging administrative task (please see the self appraisal portion of CRs).

(xi) In the ACR for the Year 2003-2004 the reporting officer has not given the date and the place in the ACR form. So it is not clear that on which date the ACR was reported."

Based on the above, he would point out that the assessment of the ACR for the year 2003-04 was defective. In his rejoinder at para 11 the applicant stated thus :

"(a) there is tampering with your applicant's ACR for the year 2003-04 being Annexure A-5 to the said application in that the date of Reviewing of your



applicant's ACR has been changed by overwriting without any initials and most probably in a different handwriting; the original date was a holiday and the changed date was a working day. Furthermore, a DO letter dated 29.08.2011 was written by Secretary, Ministry of Health and Family Welfare to the reviewing officer in this respect which is self explanatory. No explanation has been forthcoming from the deponent of the said reply as to this of which fact this learned Tribunal would be pleased to take appropriate judicial notice."

As such in the impugned communication dated 8.12.2011 nothing has been shown that those facts highlighted supra by the applicant were considered at all. Hence the applicant is entitled to the benefits under the DACP with effect from the date his juniors having been given with such benefits.

3. Per contra, the learned counsel for the respondents authority placing reliance on the reply, and the reply to the rejoinder would develop his argument which could tersely and briefly be set out thus :

The Office Memorandum dated 8.12.2011 issued by the Ministry cannot be taken as a speaking order. It is an O.M issued by the Ministry after considering the representation of the individual. Hence it would not be proper to expect that such an O.M should contain details. The fact remains that the Ministry considered all the aspects of the matter and issued the cited order. The allegation in the application as well as in the representation are all untrue. It is not that an unauthorised person meddled with the ACR. Dr S.K.Pradhan was not a reporting or reviewing officer in the year 2003-04. Hence he had no role to play.

4. In the reply the respondents authority stated thus :

"Consequent to the decision on upgradation/ retention of final grading in the ACRs of the applicant and other similarly placed officers who were assessed as 'unfit' by the DPC/review DPC, it was decided in consultation with the Department of Personnel & Training and Department of Legal Affairs to convene Review DPC meeting in respect of these officers. Accordingly, the meeting of the Review DPC was convened in UPSC on 16.03.2012 which re-examined the character rolls of all officers, under consideration, and re-assessed 08 officers as 'fit' and 03 officers as 'unfit' including Dr. Vajpayee. The promotion order in respect of 08 officers who were assessed as 'fit' by the DPC was issued vide Ministry's order No. A.32012/4/2011-CHS III dated 03.09.2012. However, since the applicant was assessed as 'unfit' for promotion, his name was not included in the promotion order."



As such the principles of natural justice have not been violated in this matter and absolutely no interference by this Tribunal is warranted. Accordingly he prays for the dismissal of the O.A.

5. The point for consideration is as to whether the ACR of the applicant for the period 2003-04 was not assessed properly in accordance with the prevailing rules and if so what should be the remedy.

6. At the outset we would like to fumigate our mind with the O.M dated 18.2.2008 of Ministry of Personnel, Public Grievance and Pensions and an except from what run thus :

"2. While considering a proposal of the Department of Revenue, the ACC has observed that the benchmark of 'Very Good', in terms of instructions issued by the Department of Personnel and Training, is applicable to all promotions at the level of Deputy Secretary and above. A natural corollary is that the benchmark prescription is adhered to rigorously as one goes up higher the ladder. Therefore, at the joint Secretary and Additional Secretary level, the requirement should be of meeting the 'Very Good' benchmark without fail.

4. The observations of the ACC have been examined in consultation with the UPSC. In order to ensure greater selectivity at higher level of administration, the DPC may ensure that for the promotion to the scale of Rs. 18,400-22,400 and above, the prescribed benchmark of 'Very Good' is invariably met in all ACRs of five years under consideration. The DPC, in terms of guidelines of this Department, is required to make its own assessment on the basis of entries in the CRs and not be guided merely by the overall grading. In cases where the assessment by DPCs are apparently not in line with the grades in the ACRs, the DPC should appropriately substantiate its assessment by giving reasons, so that the appointing authority could factor these while taking a view on the suitability of officer for promotion."

7. We would like to refer to the O.M dated 13.4.2010 as under :

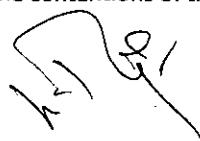
No.21011/1/2010-Estt.A
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

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

OFFICE MEMORANDUM

Sub : Below Benchmark grading 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 upgradation of the final grading.

"2. As per existing instructions, representations against the remarks or for upgradation 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 the 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 give specific reasons for upgrading the below benchmark ACR/APAR 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 upgradation 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 Officers if they are still in service' and in case of upgradatgion of the final grading given in the APAR, specific reasons therefor may also be given in the order of the competent authority."

A bare perusal of those Memoranda would highlight and spotlight the fact that DPC which is responsible for giving promotion should necessarily take into account the entries in the ACR is *stricto sensu* and should not be carried away by the ultimate general remarks of the over all grading of the individual. Over and above that the learned counsel for the applicant also would appropriately and correctly draw our attention to the minutes of the meeting of the Committee held on 22.10.2010, 24.11.2010, 25.11.2010 and 29.11.2010 for considering the representations of CHS Officers against Below Bench Mark Gradig in their ACRs, and develop his argument that even though the said Committee was not concerned with the applicant's ACR grading, they have set out certain criteria for assessing the ACR, but so far as the ACR of the applicant is concerned, the DPC did not consider the merits of the applicant independently. In our opinion in view of the details submission made by the applicant in his representation dated 4.8.2011, a re-consideration is required by the DPC/appropriate Committee whichever is responsible for suggesting and extending the benefit of DACP.

8. The applicant would in his representation dated 4.8.2011 objectively contend that during the year 2003-04 he was the Head of the department of Occupational Health and Course Director of Diploma in Industrial Health (DIH) and he made two publications in Indian Journal of Public Health. He would also refer to the fact that during 2003-04 his services were utilised by other Institutes by taking into consideration his expertise and teaching abilities. This in our view are very relevant for assessing the ACRs which should



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be taken into account. He would also in his representation point out that during the year 2003-04 he was the Head of the department of Occupational Health, ATTH & PH. On the respondents' side nothing has been pointed out so as to discredit his ability.

9. Whenever any representation is made it should be replied by stating reasons adhering to the principle of natural justice. The maxim *jura naturae sunt immutabilia* (the laws of nature are unchangeable) would be very much applicable in all matters including administrative matters where replies are given by administration, but in this case this was not done so. Hon'ble Apex Court in Secretary and Curator, Victoria Memorial Hall vs. Howrah Ganatantrik Nagrik Samity and Others, reported in (2010) 3 SCC 732 held thus :

"40. It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration justice - delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. "The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind." [Vide State of Orissa Vs. Dhaniram Luhar AIR 2004 SC 1794; and State of Rajasthan Vs. Sohan Lal & Ors. (2004) 5 SCC 573].

41. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. [Vide Raj Kishore Jha Vs. State of Bihar & Ors. AIR 2003 SC 4664; Vishnu Dev Sharma Vs. State of Uttar Pradesh & Ors. (2008) 3 SCC 172; Steel Authority of India Ltd. Vs. Sales Tax Officer, Rourkela I Circle & Ors. (2008) 9 SCC 407; State of Uttarakhand & Anr. Vs. Sunil Kumar Singh Negi AIR 2008 SC 2026; U.P.S.R.T.C. Vs. Jagdish Prasad Gupta AIR 2009 SC 2328; Ram Phal Vs. State of Haryana & Ors. (2009) 3 SCC 258; Mohammed Yusuf Vs. Faij Mohammad & Ors. (2009) 3 SCC 513; and State of Himachal Pradesh Vs. Sada Ram & Anr. (2009) 4 SCC 422].

42. Thus, it is evident that the recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as why his application has been rejected."

As such the cryptic administrative decision falls foul of the aforesaid decision of the Hon'ble Apex Court. It would be futile exercise if any direction is given to the Ministry once again to give a detailed representation. Instead we would like to direct the concerned authority to refer the matter to the Committee concerned responsible for



recommending DACP benefits to re-consider the matter in the light of the representation dated 4.8.2011 made by the applicant, and that too in the wake of the criteria that are found set out in the said O.Ms dated 2008 and 2010 and also the minutes of the meeting of the Committee cited supra as expeditiously as possible, preferably within a period of 3 months from the date of receipt of a copy of this order and communicate the result to the applicant immediately thereafter.

O.A is accordingly disposed of. No costs.

(JAYA DAS GUPTA)
ADMINISTRATIVE MEMBER

(G. RAJASURIA)
JUDICIAL MEMBER

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