

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00671/15**

Date of Order: 18.02.2019

C O R A M

**HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

1. Dhananjay Kumar Saran, S/o Late Sharda Sharan, Mohalla- Postal Park, Road No. 3, Near Kali Mandir, Chiryatand, Patna.
2. Ranjan Kumar Verma, S/o Late Pasupati Nath Verma, At-301, Shail Kailash Apartment, Near Rameshwaram Apartment, DVC Road, Yarpur, Patna.

.... **Applicants.**

By Advocate: - Mr. J.K. Karn

-Versus-

1. The Union of India through Registrar General & Census Commissioner India, Ministry of Home Affairs, 2/A, Mansingh Road, New Delhi.
2. The Under Secretary to the Govt. of India, Ministry of Home Affairs, O/o Registrar General, India, Ad. IV Section, 2/A Mansingh Road, New Delhi.
3. The Director, Census Operations Bihar, Ministry of Home Affairs, Bihar State Co-operative Bank Building Ashok Rajpath, Patna.
4. The Joint Director. O/o Director of Census Operations Bihar, Bihar State Co-operative Bank Building, Ashok Rajpath, Patna.
5. The Assistant Director (Administration), O/o Director of Census Operations Bihar, Bihar State Co-operative Bank Building, Ashok Rajpath, Patna.

.... **Respondents.**

By Advocate(s): - Mr. Mukundjee
Mr. S.K. Ravi

O R D E R
[ORAL]

Per Dinesh Sharma, A.M:- The request of the applicants is to grant them 2nd ACP w.e.f. the date their juniors have been allowed the same vide

orders at Annexure A/5 series of the OA. Through these orders ACPs have been granted to a number of employees on various dates ranging from the year 2006 to the year 2008. When the applicants made representation for the grant of ACP, they have been informed that their two ACRs, (i.e. 2002-03 and 2003-04) were below benchmark. The applicants were not given copies of these ACRs to submit their representation against these remarks and the applicants have got copies of these ACRs only on 04.09.2014 through applications under RTI Act. Denial of promotion without communicating to the applicants the copy of ACRs on the basis of which they have been denied this promotion is incorrect and is in violation of the DoP&T OM dated 13.04.2010 and ORGI letter dated 08.06.2010 which clearly stipulates that the “below benchmark” ACRs of the individual concerned have to be communicated and have to be suitably disposed of before conducting DPC.

2. The respondents, in their written statement, have denied the claims of the applicants saying that there is no provision for grant of ACP to a senior whenever a junior has been granted the same. The applicants could not be given the benefit of 2nd ACP because their ACRs for the year 2002-03 and 2003-04 were having below benchmark grading. Considering them for promotion in such a situation would have been violation of the decisions of the UPSC which prescribes (by letter No. 19011/2/2006/Ad. III dated 31.07.2006) that only eligible employees who meet the required benchmark in the ACRs of at least 4 out of 5 years shall be considered fit for promotion. It is also argued that the departmental OM quoted by the applicants is of a

subsequent date and hence it could not be made applicable in case of ACRs of the year 2002-04 and to decisions taken by the DPCs before the above-mentioned OMs were issued.

3. The applicants have filed their rejoinder in which, besides reiterating their earlier claim, they have quoted the decision of the Hon'ble Apex Court in the matter of **Dev Dutt Vs. UOI & Ors. and Abhijit Ghosh Dastidar Vs. UOI & Ors.** in which it was observed that every entry in ACR of a public servant must be communicated within a reasonable period. They have also quoted the decision dated 11.07.2013 of this Tribunal in OA 559/2008 (**Smt. Binita Mitra Vs. UOI & Ors.**) which was later confirmed by the Hon'ble High Court. The applicants have represented to the authorities, after getting copies of their ACRs for the year 2002-03 and 2003-04 for upgrading their benchmark grading. However, no action has been taken on their request. They have also quoted the judgment of the Hon'ble Supreme Court in **Prabhu Dayal Khandelwal Vs. Chairman, UPSC** where the Hon'ble Apex Court directed the respondents therein to reconsider the claim of promotion of the applicants therein only on the basis of communicated ACR reports of past years.

4. The respondents have filed a reply to this rejoinder informing that both the applicants have been promoted to the post of Assistant Director (DC) on regular basis against the temporary sanctioned post created for 2011 w.e.f. 23.07.2012 and thereafter have been appointed on regular basis against available core posts w.e.f. 10.02.2016. Thus, there has been no occasion to deny any genuine claim of the applicants. The

respondents have again stated that the claim for 2nd ACP from the date when it was granted to their juniors is not admissible because of their "below benchmark grading" and because of the non-applicability of the concept of "senior junior" in matters of ACP.

5. After going through the pleadings and hearing the arguments of the learned counsels for both the parties, it has become clear that the applicants were denied promotion because of their below benchmark grading in the ACRs of the 2002-03 and 2003-04. It is true that the guidelines prevalent at that point of time did not make it compulsory for communicating such ACR gradings to the concerned employees. Thus, the denial of promotion, based on correct interpretation and implementation of the rules as it stood at that point of time, cannot be found fault with. It is also correct that the position is changed later following the judicial pronouncements quoted by the applicants and the revised directions issued by the DoP&T in this regard since the year 2010. The respondents have made it clear now that the applicants have been promoted since the year 2012 and their request for grant of ACP on ground of their juniors having been given the ACP before is not permissible under the rules. Since the ACPs are granted to take care of stagnation in a grade when there are no promotional opportunities the claim of the applicants cannot be evaluated under rules relating to ACP since the promotion in their case was denied not because of lack of such opportunity but because of their not fulfilling the required benchmark. The only shortcoming in such denial is the change of rules later, by which this kind of denial, without communicating it to the

affected party, has been made illegal. Going by the decisions of the Hon'ble Supreme Court in Prabhu Dayal case also it may not help the applicants since in that case too the Hon'ble Court directed the DPC to consider the case of the applicant while ignoring the uncommunicated ACRs. There was no direction for granting promotion from a back date. Hence, we do not see any reason to interfere with the decision of the respondents at this stage. However, the respondents are directed to take a decision on the representation made by the applicants about upgrading their ACR gradings. If the Department finds that there are sufficient reasons to upgrade the ACRs, their case may be put again before the concerned DPC to consider whether they should be given promotion/ACP from the date on which their juniors were promoted. The OA is disposed of accordingly. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member