

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No. 3453/2014

Reserved on: 19.02.2019

Pronounced on: 02.05.2019

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Aradhana Johri, Member (A)

Narottam Kumar,
Age 33 years, ACIO-II/Exe.
S/o. Shri Awadhesh Kumar
Resident of House No. 1591/A
4th Floor, Rishi Nagar, Kotla Mubarakpur
New Delhi – 110 003.

...Applicant

(By Advocate : Ms. Avnit Bhardwaj)

Versus

Union of India through

1. The Secretary
Ministry of Home Affairs,
Government of India,
North Block, New Delhi.
2. The Director
Intelligence Bureau
Govt. of India, Minister of Home Affairs,
North Block, New Delhi-110 001.
3. Joint Director (E)
Intelligence Bureau Hqrs. MHA
Govt. of India, New Delhi – 110 001.
4. The Asst. Director/ACR
Intelligence Bureau Hqrs. MHA
Govt. of India, New Delhi.

....Respondents

(By Advocate : Mr. H. K. Gangwani)

O R D E R

By Hon'ble Ms. Aradhana Johri, Member (A) :

The applicant Sh. Narottam Kumar was recruited

on 02.09.2006 as ACIO-II/EXE with the respondents, Intelligence Bureau. The applicant has contended that his juniors were promoted vide promotion letter dated 30.03.2012 from the rank of ACIO-II/EXE to ACIO-I/EXE whereas the applicant was not promoted. As per his contention, the reason was an average ACR for the period 2009-10, which was below benchmark. He made a representation on 18.08.2011 for improvement in the grading for the year 2008-09, which was upgraded from 'average' to 'good' but, the representation for upgradation of the ACR of 2009-10 was rejected. He has claimed that no memo or warning was ever issued to him. On subsequent representation, he was informed by a memo dated 25.05.2012 that no further representation can be considered including the memorial to the President of India beyond the decision of the Competent Authority, who has decided on the representation. He has claimed the following reliefs :-

- (i) Direct the respondents to place on record all the proceedings of the applicant pertaining to the issues in present O.A for proper adjudication of the matter.
- (ii) Direct the respondents to consider the case of the applicant for promotion and promote the applicant w.e.f. 30.03.2012 from the date from which juniors of the applicant has also been promoted with all consequential benefits.
- (iii) Allowing the O.A of the applicant with all other consequential benefits and costs.
- (iv) To pass such other and further order which this Hon'ble Tribunal may deem fit and proper."

2. The respondents have denied the claims of the applicant. During the oral arguments, the learned counsel for respondents has also informed that the applicant has been subsequently promoted on 11.04.2017. They have averred that copies of the ACRs for the period 2008-09 and 2009-10 were given to the applicant vide IB Head Quarters Memo No. 9/ACR/2011-(4)-3513 dated 29.07.2011. He was considered for promotion to the rank of ACIO-I/EXE vide DPC of 2012-13 as per his inter-se-seniority in the grade. However, DPC assessed him unfit on the basis of his service records as the criteria for DPC was selection and the prescribed benchmark was 'good'. He had an average grading from the controlling officer for the years 2009-10 which was below benchmark. They have further stated that the applicant was awarded the penalty of reduction of pay by one stage for a period of one year without cumulative effect vide order dated 31.01.2014. He was apprised of the facts vide communication dated 24.01.2013 and 25.03.2013. He was again considered for promotion for DPC for 2013-14, 2014-15 but, was assessed 'unfit' by both the DPCs.

3. They have further submitted that in compliance of the DoP&T OM dated 25.04.2019 copies of the ACRs for the

period 2008-09 and 2009-10 was given to the applicant to enable him to represent. The ACR for 2008-09 was upgraded to 'good' but ACR of 2009-10 was retained as it was after the approval of the Competent Authority.

4. Respondents have also stated that Reporting Officer has communicated in his comments dated 12.09.2011 that explanation of the applicant was sought for leaving the office unattended and for casual approach in performance of his official duties on 02.07.2009, 18.07.2009, 28.07.2009 and 09.11.2009 and no reply was submitted by the applicant.

5. Heard Ms. Avnit Bhardwaj, learned counsel for applicant and Mr. H. K. Gangwani, learned counsel for respondents.

6. The applicant has cited two rulings, copies of which he has not supplied. However, they have been obtained and perused. In **State Bank of India Etc Vs. Kashinath Kher & Ors. Etc**, (1996) 8 SCC 762, the Hon'ble Apex Court observed that the confidential reports and character rolls are being prepared by the officers of the same rank in the same MMGS-II working in the establishment department over the same cadre officers working elsewhere and the reporting officers are the same. They held that the

confidential and character reports should, therefore, be written by superior officers higher above the cadres and there should be reporting authority and an officer higher in rank should review the report as well as the appointing authority or an equivalent officer should approve the confidential reports or character rolls. In the cited case, the Apex Court observed that the character report submitted were adopted in toto by the committee considering promotion without any cross verification from the character rolls or the record and independent assessment of merit and ability. In the present case, the situation is different and the authorities which have been involved at three stages of writing, reviewing and accepting the ACRs are higher in rank and of the appropriate level. Therefore, the applicant cannot derive any benefit from this ruling.

7. The second ruling cited is the case of **Union of India & Anr. Vs. V. S. Arora & Ors.** in WPC No. 5042/2002 decided by Hon'ble High Court of Delhi vide order dated 31.05.2012. Once again, though, the copy has not been filed by the applicant, it has been obtained by this Court. In its ruling, the Hon'ble High Court observed the following :-

“24. Therefore, the position that emerges is that the decision in Abhijit Ghosh Dastidar (supra) holds the field. Now, what is it that Abhijit Ghosh Dastidar (supra)

decides? It has, in the first instance, while affirming Dev Dutt (supra), concluded that non-communication of an ACR is violative of the constitutional rights of a government servant/employee. In the second instance, it has stated that such below benchmark ACRs ought not to be taken into consideration while the question of promotion of a particular government servant is in contemplation. Now, that leaves us with the further question as to what is to be done after we ignore/do not consider the below benchmark ACRs. In this regard, we have clear guidelines contained in Chapter 54 of the Manual on Establishment and Administration for Central Government Offices, which have been issued by the Government of India for DPCs (G.I., Dept. of Per. & Trg., O.M. No. 22011/5/86-Estt.(d), dated the 10th April, 1989 as amended by O.M. No. 22011/5/91-Estt.(d), dated the 27th March, 1997 as amended / substituted vide Dept. of Per. & Trg., O.M. No. 22011/5/98-Estt.(d), dated the 6th October, 2000). The relevant portion of the guidelines reads as under:-

“6.2.1. Confidential Rolls are the basic inputs on the basis of which assessment is to be made by each DPC. The evaluation of CRs should be fair, just and non-discriminatory. Hence –

(a) The DPC should consider CRs for equal number of years in respect of all officers considered for promotion subject to (c) below.

(b) The DPC should assess the suitability of the employees for promotion on the basis of their Service Records and with particular reference to the CRs for five preceding years irrespective of the qualifying service prescribed in the Service/ Recruitment Rules. The ‘preceding five years’ for the aforesaid purpose shall be decided as per the guidelines contained in the DoP&T, O M. No. 22011/9/98-Estt. (D), dated 8-9-1998, which prescribe the Model Calendar for DPC read with OM of even number, dated 16-6-2000. (If more than one CR have been written for a particular year, all the CRs for the relevant years shall be considered together as the CR for one year.) xxxx
xxxx xxxx xxxx

(c) Where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if in any case even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per (b) above. If this is also not possible, all the available CRs should be taken into account.

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25. From the above, it is clear that the DPC should consider the confidential reports for equal number of years in respect

of all the employees considered for promotion subject to (c) mentioned above. The latter sub-paragraph (c) makes it clear that when one or more confidential reports have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if, in any case, even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per sub-paragraph (b) above. If this is also not possible, all the available CRs should be taken into account. We are of the view that the same would apply in the case of non-communicated below benchmark ACRs. **Such ACRs would be in the same position as those CRs which have not been written or which are not available for any reason.**

Thus, it is clear that below benchmark ACRs, which have not been communicated, cannot be considered by the DPC and the DPC is then to follow the same procedure as prescribed in paragraph 6.2.1 (c), as indicated above."

(Bold added for emphasis)

8. From a perusal of the Hon'ble High Court's order it is clear that non-communicated ACRs cannot be read on the record of an employee and should not be considered at the time of his promotion. The intention behind communication of an ACR is that if there is something which is detrimental to the interest of the officer reported upon, he could have the right to represent against the same. In the present case, the below benchmark ACRs for 2008-09 and 2009-10 were communicated to the applicant and he represented against them, after which the ACR for 2008-09 was upgraded to 'good' from 'average'. Therefore, it is clear that this case is not one of non

communication of ACRs and the applicant cannot derive any benefit from the rulings of the Hon'ble High Court.

10. It is clear that the applicant was communicated below benchmark ACRs and given an opportunity to represent, and after his representation the ACR for 2008-09 was also upgraded. The benchmark for promotion was 'good' but since the applicant had one below benchmark ACR for the year 2009-10, though the DPC considered him as per his seniority for 2012-13, 2013-14 and 2014-15 but was assessed unfit. Therefore the applicant cannot make a claim for promotion on the basis of promotion of juniors since he was considered, but not found fit for promotion. It is to be kept in mind that an employee has a right to be considered for promotion but not the right to be promoted, if not found fit.

11. In view of the facts and circumstances of the case and the discussions in the foregoing paras, this O.A is devoid of any merit and is dismissed. No order as to costs.

(Aradhana Johri)
Member (A)

(V. Ajay Kumar)
Member (J)

/Mbt/