

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**OA No. 3577/2015**

New Delhi this the 13<sup>th</sup> day of February, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman  
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Dr. Mrs. Pramila Bhatia,  
Retd. Specialist, Grade I,  
ESI Hospital, Okhla,  
New Delhi, presently working  
as part time specialist ESI Hospital,  
Okhla.

...Applicant

(By Advocate: Mr. Atul Kumar, Mr. Ishan Dewan and Mr. Jayant Sinha)

Versus

1. Director General,  
ESIC Corporation,  
Panchdep Bhawan,  
CIG Road,  
New Delhi.
2. The Secretary,  
Union Ministry of Labour and Employment,  
Shram Shakti Bhawan,  
Rafi Marg, New Dlehi.

...Respondents

(By Advocate : Mr. Amit Yadav for Mr. Ankur Chhibar)

**ORDER (ORAL)**

**Justice L. Narasimha Reddy, Chairman:**

The applicant joined service of Employees' State Insurance Corporation (ESIC). She retired from service on 31.05.2010. Before her retirement, she became eligible to be considered for promotion to Senior Administrative Grade (SAG) under the Dynamic Assured

Career Progression (DACP) Scheme. Her case was considered for the year 2009-10. However, on finding that her ACRs for the relevant years were not up to the benchmark, she was denied promotion. When the Departmental Promotion Committee (DPC) met in the year 2011, her case was considered, but in view of the law that prevailed by that time, her case was kept aside and it was decided to communicate the adverse ACRs to enable her to make representation. On such a representation being made, the Competent Authority passed an order refusing to upgrade the ACRs. A Review DPC was conducted in the year 2012 and no recommendation was made for her promotion.

2. On an earlier occasion, the applicant filed O.A. No.3334/2009 but has withdrawn the same, when it was pointed out that a single O.A. was filed by several persons with different cause of action, liberty was given to the applicant to file separate O.A. However, she has chosen to make a representation and ultimately got the legal notice issued to the respondents. In reply to the legal notice, the respondents passed an order dated 23.06.2015 informing the applicant, their point of view and mentioning the relevant facts. The same is challenged in the O.A.

3. The applicant contends that the denial of promotion to her in the year 2009-10 was totally illegal since adverse ACRs were not communicated to her. As regards denial of promotion in the year 2011, she submits that the adverse ACRs were required to be

ignored and instead, an exercise was undertaken to defeat her rights.

4. The respondents filed a counter affidavit opposing the O.A. It is stated that the applicant did not choose to challenge the denial of promotion in the year 2009-10. It is stated that the adverse ACRs were communicated to her as required under the law, which emerged by 2011. It is also stated that the Competent Authority did not upgrade the ACRs and accordingly, the Review DPC did not recommend her case for notional promotion.

5. We heard Mr. Atul Kumar, Mr. Ishan Dewan and Mr. Jayant Sinha, learned counsel for applicant and Mr. Amit Yadav for Mr. Ankur Chibbar.

6. The effort of the applicant is to get notional promotion to SAG. She retired way back on 31.05.2010 and the attempt is to get the promotion from the date on which her juniors were promoted.

7. It is not in dispute that ACRs of the applicant for the years 2004-05, 2005-06, etc. were below benchmark and on a representation being made by her, the ACR for the year 2005-06 was upgraded to 'Very Good', but the one for 2004-05 remained below benchmark. That became an obstacle for her promotion to the SAG in the year 2009-10.

8. Based on the judgment of Hon'ble Supreme Court or the Office Memorandum issued by Department of Personnel & Training

(DoPT), it became mandatory for the Government and its Departments to communicate the ACRs, which are below benchmark. Obviously, for this reason, the case of the applicant for promotion to SAG in the year 2011 was kept aside and the adverse ACRs were communicated to her. The applicant made a representation in this behalf. The Competent Authority did not upgrade the adverse ACRs. The same was informed to the Review DPC, which met at the relevant point of time and naturally the Review DPC did not recommend the case of the applicant for promotion.

9. It is no doubt true that in O.A. No. 3067/2011, this Tribunal, in its order dated 17.07.2013, directed that the adverse ACRs of candidate must be ignored by the Review DPC. The circumstances under which such a direction was issued were not placed before us. Added to that, the judgment of Hon'ble Supreme Court in **Dev Dutt v. Union of India & others**, 2008 (7) SCALE 403 is to the effect that whenever the adverse ACRs are coming in the way of promotion of an employee, they must be communicated, enabling the employee to make representation, and depending on the result thereof, a Review DPC must be convened. In the instant case, the respondents have undertaken the same exercise. An adverse ACR was communicated to the applicant and the competent authority did not upgrade the same.

10. Therefore, the Review DPC was left with no alternative, except to refuse to recommend the case of the applicant for promotion. The applicant did not canvas anything vis-a-vis the order of the Competent Authority refusing to upgrade the adverse ACRs. We are of the view that nothing more can be done, that too, at this length of time.

11. We do not find any merit in the O.A. It is accordingly dismissed. There shall be no order as to costs.

**(Mohd. Jamshed)**  
**Member (A)**

**( Justice L. Narasimha Reddy)**  
**Chairman**

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