

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 282/2013

Reserved on: 16.09.2019
Pronounced on: 24.09.2019

Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhaya, Member (A)

G.K.Raina S/o Late Shri J.N.Raina, aged about 62 years, resident of 82/279 Nyay Path, Patel Marg, Mansarovar, Jaipur.

...Applicant.

(By Advocate: Shri Vikas Pareek for Ms.Ankita Mishra)

Versus

1. Union of India through its Secretary to the Government, Ministry of Tourism, Govt. of India, New Delhi.
2. The Additional Director General, Ministry of Tourism, Govt. of India 1-Parliament Street, New Delhi-01.
3. The Regional Director, Govt. of India Tourist Office, 88, Janpath, New Delhi-110001.
4. The Assistant General, India Tourism, State Hotel, Khasa Kothi, Jaipur.

...Respondents.

(By Advocate: Shri N.C.Goyal)

ORDER

Per: A. Mukhopadhaya, Member (A):

The applicant has approached this Tribunal in this Original Application, (OA), seeking the following relief:-

(i) By an appropriate order or direction the respondents be directed to grant all the due

(2)

benefits to the applicant i.e. Assured Career Progression, (ACP), with retrospective date, promotion, and correct fixation of pay scale and granting the correct grade pay and consequently the pension of the applicant be also revised.

(ii) By an appropriate order or directions the impugned orders dated 24.05.2012, 18.05.2012 and the order dated 30.04.2007 be quashed and set aside.

(iii) By an appropriate order or directions the respondents be directed to confirm the applicant on the post of UDC from the year 2000 after two years from the date of adhoc promotion. Further, the respondents be also directed to fix the applicant in the correct pay scale and also grant the correct grade pay along with consequential benefits.

(iv) By an appropriate order or direction the respondents be directed to make the payment of arrears along with interest @ 12% p.a.

(v) Cost of the application be also awarded to the applicant.

(vi) Any other order, directions or relief which are deemed fit and proper be also passed in favour of the applicant in the larger interest of equity justice and law.

2. The brief facts of the case are that the applicant was initially appointed as LDC in the respondent department, Tourism, on temporary basis on 11.10.1972 and was granted permanent status with effect from 01.10.1975. While working as Stores Assistant at Gulmarg in the year 1986, he was served a charge sheet dated 07.04.1986 under Rule 14 of the CCS (CCA) Rules, 1965. The departmental enquiry, (DE), followed took a long time to reach a conclusion and finally vide order dated 30.04.2007, (Annexure A/2), the applicant was penalised with censure. In the

(3)

meanwhile, he had been promoted as UDC on adhoc basis with effect from 12.03.1998 vide respondents' order of 17.03.1998. He states that although he continued to work as UDC on adhoc basis, the respondents granted him regular promotion on the post vide their order of 03.11.2008, (Annexure A/9), confirming him as UDC with effect from 15.10.2008. The applicant further states that during the period the respondents did not grant him ACP benefits on account of the pendency of the earlier mentioned DE. Thus, the applicant, feeling aggrieved by the penalty of censure, not being granted ACP and also not being granted what he contends was his due promotion, filed OA No.268/2009 before this Tribunal seeking relief on these counts. This OA was decided by this Tribunal vide its order dated 13.02.2012, (Annexure A/10), as follows:

Therefore, we deemed it proper and just to direct the respondents to re-examine the case for grant of ACP to the applicant from the due date expeditiously but in any case not later than a period of three months from the date of receipt of a copy of this order. If the applicant is aggrieved by the decision so taken by the respondents, he is at liberty to file substantive OA.

3. Thereafter, in response to his representation, the respondents, vide their letter of 18.05.2012 forwarded vide letter of 24.05.2012, (Annexure A/1), rejected his claim for grant of any further ACP other than the one already granted to him vide

(4)

order dated 24.04.2009, (Annexure A/8), stating that he is not entitled for the same. Aggrieved by this order, the applicant has approached this Tribunal in the present OA.

4. The respondents in their reply to the OA, while confirming the chronological sequence of events as given above, have stated that the instructions/clarifications of the Department of Personnel & Training, (DoP&T), at Point No.48 of its OM No.35034/1/97-Estt. (D) (Vol.) IV) dated 18.07.2001 clearly direct as follows:

If penalty imposed is Censure or recovery of loss to the Government, then such up-gradation shall be allowed from the date of meeting of the Screening Committee which met to consider his case subsequently to imposition of penalty.

5. The respondents state that the applicant was accordingly allowed his ACP with effect from 16.04.2009, i.e. the date of meeting of the Screening Committee for grant of ACP subsequent to the imposition of the penalty of censure upon him vide order of 30.04.2007; (Annexure A/2).

6. As regards the promotion of the applicant from LDC to UDC on adhoc basis with effect from 12.03.1998 and confirmation of the same with effect from 15.10.2008 by the respondents vide their order of 03.11.2008, (Annexure A/9), the reply avers that the confirmation/regularisation of the applicant's adhoc promotion

(5)

as UDC was done as soon as an appropriate vacancy arose at the level of UDC; (para 8 of reply to OA refers).

7. As regards the contention of the applicant that even when while granting him the 2nd financial upgradation vide their order dated 24.04.2009, (Annexure/8), he was not granted the correct pay scale and grade pay due to him, (para 4 (XI) of OA refers), the respondents aver that vide the order in question the applicant was granted the pay scale of Accountant which is the next higher financial upgradation from the pay scale of UDC and therefore that the correct pay scale has been granted to him vide this order of 24.04.2009; (Annexure A/8). Finally, the respondents contend that in compliance of the directions of this Tribunal passed in OA No. 268/2009 and the related representation of the applicant, they have duly considered the applicant's representation and have correctly reached the conclusion that he is not entitled to grant of any further ACP other than the one already granted to him vide order of 24.04.2009; (Annexure A/8). The respondents have therefore prayed that no legal injury has been visited upon the applicant and the OA be dismissed.

8. Learned counsels for the applicant and the respondents were heard and the entire material available on record was perused.

(6)

9. During arguments, at the very outset, learned counsel for the respondents drew this Tribunal's attention to its order dated 13.02.2012 in OA No.268/2009, (Annexure A/10), stating that in this OA too, while the applicant had initially challenged the censure order passed against him on 30.04.2007, [item (i) of relief sought], para 2 of the judgment makes it clear that he did not press for this relief and accordingly the matter was adjudicated only with regard to his claim for ACP. Learned counsel for the respondents argued that having foregone his claim challenging the censure order it was not open to the applicant to again agitate this issue and claim relief against the censure order again by way of the present OA.

10. Learned counsel for the applicant focused on the applicant's claim for grant of ACP from an earlier date, promotion, correct fixation of pay scale and grade pay and consequently revised pension, (item No.8 (i) of relief sought in the present OA], as well as confirmation of the applicant on the post of UDC from the year 2000, i.e. two years from the date of his adhoc promotion in 1998; [item No.(iii) of relief sought in this OA]. In his arguments, he reiterated the points made in the OA and relied in particular on this Tribunal's observation in para 10 of its order dated 13.02.2012 in OA No.268/2009, (Annexure A/10), which reads as follows:-

10....In our opinion, the clarification issued by the DoP&T on point No. 48 of the OM dated

(7)

18.07.2001, (Annexure A/5), should be applicable in the normal case of the finalisation of the departmental proceedings. If the Department is taking long 21 years to finalise the departmental proceedings against its official/employee and in the end penalty of censure is awarded and on the basis of that penalty, not granting the ACP appears to be too harsh and against the principles of natural justice.

11. *Per contra*, learned counsel for the respondents argued that, as admitted by the applicant himself, the abovementioned observation of the Tribunal in its order dated 13.02.2012 in OA No.268/2009, (Annexure A/10), is an “**opinion**” and is therefore not mandatorily binding. He reiterated that the mandatory directions in the order dated 13.02.2012 passed by this Tribunal in OA No.268/2009, (Annexure A/10), were fully complied with by the respondents, who, after due consideration of the applicant’s representation, passed the impugned order in question, (Annexure A/1), for the reasons detailed in the reply to the OA. He argued that since the action of the respondents is squarely based on DoP&T instructions on the subject of grant of ACP in the circumstances of the case of the applicant, the decision taken by them vide the impugned order at Annexure A/1 cannot be said to be unjustified or illegal or indeed arbitrary in any manner.

12. In this case, the applicant has not been able to dispute or counter the averment of the respondents that the grant of ACP to

(8)

him after the completion of the DE against him in 2007 is as per the procedure mandated by DoP&T instructions, as contained at Point No.48 of OM No.35034/1/97-Estt. (D) (Vol.) IV) dated 18.07.2001. The respondents' averment that the applicant's promotion as UDC was confirmed as soon as a clear vacancy arose for the same has also not been contested by the applicant. Given this position, there appears to be no factual or illegal infirmity in the action/decision taken by the respondents vide their impugned order dated 18.05.2012; (Annexure A/1).

13. Thus, we find no force or merit in this OA which is accordingly dismissed.

14. There will be no order on costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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