

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No.O.A.329 of 2012

Date of order : 11.2.16

Present : Hon'ble Mrs. Bidisha Banerjee, Judicial Member

Hon'ble Ms. Jayati Chandra, Administrative Member

DR. ALAK KUMAR DAS

VS.

UNION OF INDIA & ORS.
(E. RLY.)

For the applicant : Mr. C. Sinha, counsel

For the respondents : Mr. P.B. Mukherjee, counsel

ORDERPer Ms. Jayati Chandra, A.M.

This O.A. has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- "a) To direct the respondents to grant SAG w.e.f. 25.6.09 as has been given to his Batchmates as he is entitled to get the same;
- b) To set aside and quash the impugned ACR/APAR for the years 2004-2005 (I & II), 2005-06, 2006-07(I & II), 2008-09, 2009-10 & 2010-2011;
- c) Any other order(s) as the Hon'ble Tribunal deem fit and proper."

2. The facts of the case as stated by the applicant in the O.A. are as follows:-

(a) The case of the applicant is that he was eligible to be promoted to Sr. Administrative Grade(S.A.G.) under the Dynamic Assured Career Progression(DACP) Scheme dated 07.01.2009 in the year 2009. The list of persons promoted to S.A.G. as approved on 15.09.2009 did not carry his name as the DPC did not recommend him. The applicant is aggrieved by such action as no adverse ACRs were ever communicated to him. The Hon'ble Apex Court in the case of **Dev Dutt vs. Union of India & Ors.** [(2003)8 SCC(L&S)-725] had held that all ACRs are required to be communicated to the employees. Earlier, the Hon'ble Apex Court had held in **Bahadur Singh vs. State of Rajasthan** [1941(2) SLR-583] that the department has to first dispose of the representation received against adverse ACRs before the employee is considered for promotion or any other upgradation which involves selection.

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(b) The applicant was informed by the respondents' letter dated 01.06.2010(Annexure A-3) that he was not recommended by the Departmental Promotion Committee(D.P.C.) on account of the ACRs of 2004-2005, 2005-2006 and 2006-2007 being below benchmark. He was also asked to submit his representation within 15 days of receipt of the said communication. The applicant made representations as directed. His representations were disposed of in a very cryptic manner. Vide letters dated 11.11.2010 and 28.10.2010 the ACRs of 2005-2006 and 2006-2007 were upgraded. However, his representation for upgradation of the ACRs for 2004-2005, was rejected vide order dated 20.10.2010 (Annexure A-7). He was given copies of ACR for 2009-2010 vide letter dated 02.03.2011, ACR for the year 2010-2011 vide letter dated 08.09.2011. The final gradings of the ACRs of the applicant subsequent to disposal of his representations stood as follows:-

Year	Grading
2004-2005	Good
2005-2006	Very Good
2006-2007	Good
2007-2008	Very Good
2008-2009	Not communicated
2009-2010	Very Good
2010-2011	Very Good

(c) Despite such upgradation the applicant was not included in the promotion list approved on 20.09.2011. As per information received by him, a decision had been taken to set the benchmark for granting S.A.G. to an employee would not be 18 points procured in the consecutive five years prior to the date of consideration and he had secured 18 points on the basis of upgradation of his ACRs, therefore, his non-inclusion in the list of promotion as approved on 20.09.2011 is not justified.

3. The respondents have not denied the basic facts of the case except to state that the bench mark for selection for grant of S.A.G. was 'Very Good' on the basis of five years' ACRs. They have further admitted that the applicant was never communicated the ACRs of 2004-2005, 2005-2006 and 2006-2007 prior to holding of the D.P.C. meeting in August, 2009, as there was no instruction for communicating the entries which were not adverse in nature. The policy to communicate the ACRs was taken vide DOP&T's O.M. dated 14.05.2009 and endorsed by Railway Board's letter dated 18.08.2009. However, the stipulation for communication of the

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ACR was with regard to the ACR of 2008-2009 onwards. Consequently, ACRs/APARs for 2008-2009, 2009-2010 and 2010-2011 were communicated to him. Due to a further revision in the policy of communication of ACRs as available by DOP&T's circular dated 13.04.2009 all ACRs which were below bench mark were duly communicated and representations invited from the applicant as per letter dated 01.06.2003(Annexure A-3). This was done prior to holding of the review DPC. The applicant gave his representations which were duly considered and the ACR of 2005-2006 were upgraded from 'Good' to 'Very Good' and ACR for 2006-2007 was upgraded from 'Average' to 'Good'. His ACRs/APARs from 2007 onwards have been graded as 'Very Good'.

4. No rejoinder has been filed.

5. We have heard the ld. counsel for the parties and perused the materials placed on record.

6. It is evident from the body of the ACRs provided, that the ACRs for 2004-2005, 2005-2006 and 2006-2007 were not adverse in nature. As such, the prevalent practice in all Government department was to communicate only adverse ACRs. The Hon'ble Apex Court in Dev Dutt (*supra*) had directed that the ACRs should be communicated to all the employees. Consequently the DOP&T passed O.M. dated 18.08.2009 vide which all entries in the APARs/ACRs for the year 2008-2009 onwards began to be communicated to the employees concerned.

7. Subsequently, vide Office Memorandum dated 13.04.2010 the following decision was taken:-

"Subject : Below Benchmark gradings 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.

Xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx it has been decided that if an employee is to be considered for promotion in a future DPC and his ACRs prior to the period 2008-09 which would be reckonable for assessment of his fitness in such future DPCs contain final grading which are below the benchmark for his next promotion, before such ACRs are placed before the DPC, the concerned employee will be given a copy of the relevant ACR for his representation, if any, within 15 days of such communication. It may be noted that only below benchmark ACR for the period relevant to promotion need be sent. There is no need to send below benchmark ACRs of other years."

It is clear from the said DOP&T order that the ACRs of below bench mark of only those years to be communicated which were under consideration for taking any decision on promotion/upgradation etc. It is in keeping with this direction that the respondents communicated the below bench mark ACRs for the relevant period vide their communication

dated 01.06.2010(Annexure A-3) and gave the opportunity to file representations, if any. The applicant filed representations against the below benchmark entries in his ACRs which were disposed of as narrated in para 2(b) above..

8. Now the questions that arise are :-

- (a) Whether the revised upgraded ACRs were considered in the reviewed list of 29.08.2011;
- (b) Whether the applicant was left out despite clearing the bench mark;

9. From the dates of the disposal of representations for upgradations i.e. 11.11.2010 and 28.10.2010 it is clear that the upgraded ACRs were available prior to drawing up of the list dated 29.08.2011. By not challenging the proceedings of the DPC as also not submitting a rejoinder, the applicant has failed to prove that his upgraded ACRs for 2005-2006 (Good to Very Good) and 2006-2007 (Average to Good) have not been considered. The applicant is further aggrieved by the decision of the respondents to maintain the status quo with regard to ACR of 2004-2005. However, in his pleadings he has not demonstrated any legal flaw to substantiate his statement that the decision was taken "in a routine and cryptic manner."

10. We now come to the question of bench mark for the DPC. Once again the applicant has not challenged the DPC proceedings or refuted the statement of the respondents that DPC did not recommend him for inclusion in the list of 29.08.2011. The only paper he has produced is that a decision had been taken to fix the bench mark at 18 points. However, he has not explained the system of awarding points or in what manner he had earned 18 points or that DPC had flouted the same. He has also not refuted the statement of the respondents that the bench mark for selection was 'very good' for five years..

11. By the way of relief 8(ii) he has sought the setting aside/quashing of ACRs/APARs for the years 2004-2005, 2005-2006 and 2006-2007, 2008-2009, 2009-2010, 2010-2011. As per departmental rules , on being communicated with the contents of ACR/APAR, the employee is required to make a representation to the competent authority within a stipulated time. He had made the representations against ACRs of 2004-2005, 2005-2006, 2006-2007 & the same were disposed of. There is no prayer to set aside such representations. The rest of the relief with regard to 2008-2009, 2009-2010 and 2010-2011 is premature as he is required to make the 1st representation to the competent authority within the department.

12. On the basis of the discussions above, the O.A. is devoid of any merit and is dismissed.

No costs.

(JAYATI CHANDRA)
Administrative Member

(BIDISHA BANERJEE)
Judicial Member