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CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No.O.A.320 of 2012

Date of order : 11.2.16

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

Hon'ble Ms. Jayati Chandra, Administrative Member

SUBRATA CHAKRABORTY

VS.

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

For the applicant : Mr. C. Sinha, counsel

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

ORDER

Per 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 my Batchmates as I am entitled to get the same;
- b) To set aside and quash the impugned ACR/APAR for the years 2004-05, 2005-06, 2006-07 & 2007-08.
- 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.

(b) The applicant was informed by the respondents' letter dated 01.06.2010(Annexure A-2) that the ACRs of 2005-2006, 2006-2007, 2007-2008 are below benchmark for formation of S.A.G. panel. He was also asked to submit his representation within 15 days of receipt of the said communication. The applicant gave his representations as directed vide letter dated 09.07.1991. Vide letters dated 03.12.2010(Annexure A-4), 22.11.2010(Annexure A-5) and 16.05.2011(Annexure A-5) the earlier gradings given, were retained. The final gradings of the ACRs of the applicant subsequent to disposal of his representations along with points accrued stood as follows:-

Year	Grading	Points
2003-2004	Very Good	4
2004-2005	Very Good	4
2005-2006	Good	3
2006-2007	Good	3
2007-2008	Very Good	3 and a half
	Total	17 and a half

Total points earned=17 and a half

3.

In the O.A.

the applicant has raised his objections, <sup>to</sup> so, the various ACRs communicated to him along the following lines:-

Part ACR/APAR 03.10.07 to 31.03.2008

(i) The applicant resumed at KPA on 03.10.07/worked under the then CMS/KPA on 03.10.07 to 04.01.08(93 days) (Dr. Anil Kumar) on 04.01.08 (Dr. Anil Kumar) was transferred to MB/N. Rly. and therefore Dr. Anil Kumar can not write ACR/APAR because he was at KPA only for 93 days (less than 6 months).

(ii) CWM/KPA certified the ACR for the period from 03.10.07 to 31.03.08 for one year.

In view of the above CWM/KPA, whose actual tenure is less than 6 months he can not write the ACR/APAR.

(iii) Part-I-personal data is complete in as much as only name & designation are mentioned. The year/period mentioned is 2007-08 which should actually be from 03.10.2007 to 31.03.08.

(iv) In part ACR 3.10.07 to 31.03.08 there is no signature of CMB/E. Rly. and GM/E. Rly. It is further stated that the said ACR has not been accepted by the Accepting Authority(GM/E. Rly.) as there is "No remark" of Accepting Authority. It is not known how the said ACR has been accepted.

(v) The Benchmark-Part ACR of 03.10.07 to 31.03.08 is accepted at the earlier grading although the Reporting Authority No.4 did not make any adverse remark.

In regard to ACR for the period from 01.04.05 to 31.03.06 it is stated as follows:-

ACR for the period from 01.04.05 to 31.03.06 carries no signature of CMB E. Rly. & GM/ER was there and hence the ACR has not been accepted by the Accepting Authority (GM, E. Rly. as there is "No Remark" of Accepting Authority. Therefore, the ACR can not be accepted.

4. 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 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 his prayer for upgradation was disallowed vide orders dated 03.12.2010, 22.11.2010 and 16.05.2011.

5. No rejoinder has been filed. The Id. counsel for the applicant submitted on 16.06.2014 that the applicant did not wish to file any rejoinder.

6. We have heard the Id. counsel for the parties and perused the materials placed on record.

7. It is evident from the body of the ACRs provided, that the ACRs for 2004-2005, 2005-2006, 2006-2007 and 2007-2008 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.

8. 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.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX 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."

9. 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..

10. The applicant has given certain reasons in para 3 above in support of his claim for upgradation of his ACRs. We find that none of these grounds have been dealt by the respondents in passing the orders dated 03.12.2010, 22.11.2010 and 16.05.2011. Therefore, the O.A. is partly allowed. The orders dated 03.12.2010, 22.11.2010 and 16.05.2011 are quashed. The case is remanded with a direction to the applicant to make a fresh representation confining himself to the points raised in the O.A., within one month of receipt of a copy of this order. The respondents will dispose of the same as per the relevant rules of disposal of such representation against ACRs/APARs within 3 months thereafter and hold a review DPC within two months therefrom.

11. The O.A. is accordingly disposed of. No costs.

(JAYATI CHANDRA)  
Administrative Member

(BIDISHA BANERJEE)  
Judicial Member