

OA.No.170/01439/2018/CAT/BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01439/2018

DATED THIS THE 04TH DAY OF OCTOBER, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

Sri T.R. Sreenivas,
S/o late T. Ramanna,
Aged 55 years,
Working as Deputy Director General,
National Tuberculosis Institute,
O/o Health and Family Welfare
No. 3, Bellary Road,
Bangalore 560 003
(By Advocate Shri Ranganatha S. Jois)

..... Applicant

Vs.

1. The Union of India,
Represented by its Secretary,
Minsitry of Statistics and Programme Implementation,
Sardar Patel Bhavan,

Sansad Marg,
New Delhi 110 001

2. The Joint Director (ISS)

Ministry of Statistics and Programme Implementation
ISS Division, Govt. of India,
Sardar Patel Bhavan,
Sansad marg,
New Delhi 110 001

3. The Deputy Director (ISS)

Ministry of Statistics and Programme Implementation
ISS Division, Govt. of India,
Sardar Patel Bhavan,
Sansad marg,
New Delhi 110 001

....Respondents

(By Shri M.V. Rao, Counsel for the Respondents)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. The matter seems to be covered by our order in OA No. 444 &
445/2009 dated 21.09.2011 which we quote:

"O R D E R

Hon'ble Smt. Leena Mehendale, Member (A) :

These two applications have been filed on 8.10.2009 under Section 19 of the Administrative Tribunals Act, 1985. OA 444/2009 seeks to quash the adverse remarks in the ACR for the period July, 2002 to February, 2003 written by Respondent No.2 in 2005. OA 445/2009 seeks to challenge non-inclusion of the applicant for regular promotion which his other colleagues received as a result of the DPC held in 2008. The two O.As are clubbed together because the applicant has avered that his non promotion is due to the remark in the ACR for the year 2002-03.

2. In OA 445/2009, the applicant states that he joined the Indian Statistical Service (ISS) on 15.9.1980, promoted to the JAG (Junior Administrative Grade) in the pay scale of rs.12,000-16500/- with effect from 10.5.1999 and later placed in the level of NFSG (Non Functional Selection Grade) in the pay scale of Rs.14,300-18,300/- (pre-revised). He received adhoc promotion to SAG (Senior Administrative Grade) along with 38 other ISS officers with effect from 2.11.2006 and has been working as DDG, Data Processing Centre, NSSO, Bangalore Centre since then.

3. The DPC for regular promotion to SAG was held on 26.9.2008. The applicant, having completed 8 years of qualifying service in the grade of JAG in May, 2007, expected to be promoted, but, was not empanelled. He made a representation on 1.10.2008 to Respondent No.1, i.e., the Secretary, Ministry of Statistics and Programme Implementation, vide Annexure-A/3. The representation as abbreviated by us is as below:

The applicant belongs to the parent cadre of Ministry of Statistics and Programme Implementation, but, was on deputation to the Ministry of Road Transport and Highways (RT&H) in their TRW (Transport Research Wing) for the period May, 2001 to February, 2003. In the year 2001-02, he was reporting to the Adviser, TRW, who was an officer from the IES (Indian Economic Service). On transfer of this Adviser in May, 2002, the applicant started reporting to two Secretaries vis., Secretary, RT&H and Secretary, Shipping for some time till the new Advisor joined. He also started requesting for posting to southern region due to family problems after September, 2002. As a result of this, he was finally repatriated back to his parent Department to work at Bangalore. He claims not to have received the blank CR forms for writing his self-appraisal for the year 2002-03, which as per the practice, he should have received by end of April, 2003. Under the DoPT instructions, the Reporting Officer should be asking in writing for the self-appraisal, and in the event of not getting it, the Reporting Officer SHALL write the report before 31st May of the following

year and send it to Reviewing Authority. As the applicant did not receive any such communication, justifiably claims to have remained under the impression that a certificate to that effect would be kept on his service record and the DPC would ignore any remarks made by the Reporting Officer in the ACR of 2002-03 and would consider his case for promotion to SAG, by looking at his ACRs for other years, which are all above the benchmark.

4. We find that non-consideration of his case for promotion on regular basis was the first indication to the applicant that something was amiss with respect to his ACR of 2002-03 which he learnt only in 2008. We observe that by this time, the DoPT has already come out with a new guidelines for writing and communication of ACR which are based on the principle of complete transparency. Even the earlier system purports to ensure natural justice and opportunity to explain. The applicant would submit that since he has not received any adverse communication regarding any assessment, hence, such assessment if considered by the DPC would amount to denying natural justice to him and as such, the prayer for taking objective view and rendering justice.

5. On representation of the applicant, a query was raised by Respondent No.1 to UPSC as at Annexure-A/4 stating that

"the Minister of State for Ministry of Statistics & PI desired to know whether any communication(s) for submitting the self appraisal for the period July, 2002 to February, 2003 was made by the Ministry of RT&H to the applicant."

To this query, the Ministry of RT&H informed that no correspondence to such effect could be traced in the Ministry. It thus turns out that the applicant was reported as Outstanding Officer during the entire 5 year ACR matrix of 2002-07 except for the part of ACR for the year 2002-03. It is coupled with the fact that the reporting was done only in 2005 and that too after the retirement of the then Secretary, who was the Reviewing Officer, thus, denying any opportunity for the officer reported upon to get relief from the Reviewing Officer. In view of the above, the Hon'ble Minister of State, Ministry of Statistics & PI desired that these facts may be brought to the notice of the Members of the DPC for proper assessment of his promotion. This is yet to be acted upon.

6. In the meantime, an order dated 29.5.2009, Annexure-A/4, was passed by Respondent No.1 to revert the applicant to the grade of JAG, which he challenges in the present OA No.445/2009. On 14.10.2009, he was granted an interim order of stay by this Tribunal

which continues till date and therefore, he continues to work in the post of DDG.

7. *Reverting back to OA 444/2009, in which the applicant has challenged the adverse remarks recorded in his ACR. The applicant has alleged malafide against Responkdent No.2, which we would ignore being not substantiated. However, the crux of the matter is that the Reporting Officer has written the report for the year 20-02-03 in the year 2005, that is, afer 2 years, which completely vitiates the purpose of ACR. This alone is sufficient to expunge the adverse or below-benchmark remarks if any.*

8. *It is pertinent to discuss briefly the proclaimed philosophy of the Government regarding the ACRs. It has been time and again reiterated by the DoP&T that the purpose of ACR is to give a timely opportunity to the incumbent to improve his performance, the purpose is not punitive but to bring out the excellence. Accordingly, time is of essence. A timely communication alone would give full opportunity to the incumbent to correct the mistakes or to achieve the desired excellence. Hence, the rule specifically demands from the Reporting Officer that within one month of the assessment year (i.e., ending March), the Reporting Officer SHALL communicate a blank proforma to the officer to be reported upon, seeking his self appraisal and in the event of not getting it, the Reporting Officer SHALL write the report before 31st May of the year and send it to Reviewing Authority. There are also other procedural rules which preclude the Reviewing Officer to review the reports if the said Reviewing Officer has retired. In case of Accepting Authority, in the event of such authority being a Minister, he/she is precluded from making any remarks of acceptance after demitting the office.*

9. *Thus, the benefit of the 3 tier system of assessment is denied to the concerned officer as well as to the department if any delay by the Reporting Officer results in exclusion of the Reviewing or the Accepting Authority. It is often seen that such laudable objective as proclaimed for ACR writing exercise is taken lightly by the Reporting Officers and perhaps by the entire system. When the Reviewing Authority has not received the ACRs from the Reporting Officer, a certain duty is cast upon the Reviewing Officer also to insist that the Reporting Officer submits the report in time. The General Administration cell of the Department, which is the custodian of the ACRs is also duty bound to remind all the Reporting, Reviewing and Accepting Authorities and insist on timely completion of the exercise. This aspect has remained unattended to a large extent, often resulting in suffering of the junior officers, especially, at the time whey they are at a critical stage of receiving their promotion and career progression.*

10. We find that the present OA is also a case of such undue suffering of the applicant for reasons that the senior officers have forgotten to attend to this matter which should have been completed as a sacrosanct routine.

10.1 First of all, the remarks are liable to be expunged solely on the ground that they were written after 2 years.

10.2 The adverse remarks if any including the remark 'GOOD' which is always known to be below the benchmark for promotion has to be communicated. We see no evidence that this was communicated even after having been written in 2005, while the DPC is held in 2008. Thus, it is a lapse not only of Reporting Officer but also of the custodians of ACR.

10.3 The report was written after nearly 2 years by which time, the Reviewing Authority has retired (Secretary, Ministry of RT&H) and the Accepting Authority (Minister of the Department) may have demitted charge. Thus, the applicant was deprived of the benefit of review by the Reviewing Authority and any other observation by the Accepting Authority.

10.4 From Annexure-A/2 which is the ACR for the year 2001-02, the applicant seems to have obtained 'Outstanding' remark, which was confirmed by the Reviewing Authority, viz., the Secretary, Ministry of RT&H. Therefore, the applicant can claim as a fair possibility that had the ACR been written in time, i.e., before 31.5.2003, as per the instructions of the DoPT, then, the same Secretary who continued as Reviewing Officer would have had the chance to modify the report upward.

11. On these grounds, the adverse remarks, viz., GOOD, needs to be ignored as far as it may interfere with a fair chance of promotion of the applicant and to that extent OA 444/2009 is allowed.

12. Coming back to OA No.445/2009, we find that since the below the Benchmark ACR is to be ignored, a review DPC will have to be convened to take a fresh view of the suitability of the applicant for regular promotion to the SAG grade ignoring the ACR for the year 2002-03. This will also have to be pursued with the UPSC afresh. Hence, we consider a period of four months as sufficient for the respondent department to complete both the exercises and to communicate the result to the applicant. Till such communication, the applicant will continue in the present post of DDG. Needless to say that if found suitable, he will continue in the same post on a regular basis at par with the 38 other ISS officers who have received their regular promotion orders as a result

of the DPC meeting held in 2008.

13. In conclusion, both OA No.444/2009 and 445/2009 are allowed as above. No order as to costs.”

2. The matter went up to the Hon’ble High Court and the Hon’ble High Court had passed an order in Writ Petition No. 19300/2012 and connected cases dated 02.02.2016 which we quote:

“THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE COMMON ORDER DATED 21.9.2011 IN OA 444/09 AND 445/09 ON THE FILE OF THE LD. CAT, BANGALORE ETC.

*THESE WRIT PETITIONS COMING ON FOR HEARING THIS DAY, **MOHAN M. SHANTANAGOUDAR J**, MADE THE FOLLOWING:-*

ORDER

In these writ petitions, the question to be decided is as to whether the down-graded remarks in the Annual Confidential Reports (‘ACRs’ for short) of the public servant should be communicated to the concerned public servant or not and if the same are not communicated, what would be the effect of such non-communication.

2. The aforementioned question is fully answered by the Apex Court in the case of SUKHDEV SINGH .vs. UNION OF INDIA & OTHERS (2013) 9 SCC 566. The Apex Court in the said judgment has laid down that every entry in ACR of a public servant must be communicated to him/her within a reasonable period and such communication helps in achieving threefold objectives viz., (a) The communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. (b) On being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. (c) Communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. In the very judgment, the Apex Court has ruled that the earlier judgments of the Apex Court in SATYA NARAIN SHUKLA .vs. UNION OF INDIA

AND OTHERS (2006) 9 SCC 69 and K.M. MISHRA .vs. CENTRAL BANK OF INDIA AND OTHERS (2008) 9 SCC 120 and the other decisions of the Apex Court taking a contrary view are declared to be not laying down a good law.

In view of the same, the Tribunal is justified in concluding that the adverse remarks made against the respondent in the ACRs should have been communicated. Since the order of the Tribunal is just and proper, no interference is called for.

*Petitions fail and the same stand **dismissed**.”*

3. Shri M.V. Rao, learned counsel for the respondents, submits that the respondents had approached the Hon'ble Supreme Court in SLP and the SLP having been dismissed the matter has become final and for others the decision of the Tribunal has been implemented. Therefore, it applies pari materia to the applicant herein also who is in an exactly similar situation.

4. The OA is therefore allowed to the same extent as mentioned above. Benefits to be extended within the next two months. No order as to costs.

(C.V. SANKAR)

MEMBER (A)

(DR.K.B.SURESH)

MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/01439/2018

Annexure A1: Copy of the order dated 11.12.2009

Annexure A2: Copy of the order dated 05.04.2011

Annexure A3: Copy of the representation dated 16.12.2014
Annexure A4: Copy of the order dated 14.12.2012
Annexure A5: Copy of the impugned order dated 14.12.2016
Annexure A6: Copy of the representation dated 03.08.2017
Annexure A7: Copy of the representation dated 23.11.2017
Annexure A8: Copy of the OM dated 27.12.2017
Annexure A9: Copy of the order dated 02.08.2018
Annexure A10: Copy of the order dated 04.10.2012
Annexure A11: Copy of the order dated 13.11.2017
Annexure A12: Copy of the order of the Hon'ble High Court of Karnataka in
WP No. 19300/2012 and WP No. 39182/2012 dated
02.02.2016
Annexure A13: Copy of the order dated 06.06.2007

Annexures referred in reply statement

Annexure R1: Copy of the OM dated 14.05.2009
Annexure R2: Copy of the OM dated 13.04.2010

Annexures referred in rejoinder

Annexure A14: Copy of the OM dated 23.06.2010
Annexure A15: Copy of the order dated 30.06.2011
Annexure A16: Copy of the order dated 27.06.2019

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