

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA No. 2215/2014

this the 31st day of October, 2019

Hon'ble Mr. S.N. Terdal, Member (J)
Hon'ble Mr. A.K. Bishnoi, Member (A)

Sh. Keshri, Age 58 years
S/o Late Shri Ram Charan
R/o D-613, Street No. 3, Ashok Nagar, Delhi-93.

...Applicant

(By Advocate : Mr. Sachin Chauhan)

Versus

1. Union of India
Through Secretary
Ministry of Urban Development, Nirman Bhawan, New Delhi.
2. The Director General (Works)
CPWD, Nirman Bhawan, New Delhi.
3. The Additional Director General (S&P)
through
the Director General (Works),
CPWD, Nirman Bhawan, New Delhi.
4. The Director (Works)
Ministry of Urban Development
through
the Director General (Works)
CPWD, Nirman Bhawan, New Delhi.
5. The Superintendent Engineer
P.W.D. Circle-IV (Delhi Admn.)
(Reporting Officer)
MSO Building, New Delhi.
6. The Chief Engineer
P.W.D Zone – III
(Reviewing Officer) through
The Director General (Works)
CPWD, Nirman Bhawan, New Delhi.

... Respondents

(By Advocate: Mr. Rajinder Nischal)

ORDER (ORAL)

Mr. S.N. Terdal :

Heard Mr. Sachin Chauhan, learned counsel for applicant and
Mr. Rajinder Nischal, learned counsel for respondents.

2. This OA has been filed by the applicant seeking the following reliefs :

“8.1 To set aside the minutes of the Screening Committee held on 16.09.2013 whereby the benefit of 2nd financial upgradation under ACP Scheme in the pay scale of Rs. 10000-15200 (Grade Pay Rs. 6600/-) w.e.f. 19.12.2003 is being denied to applicant and to further direct the respondent to grant the benefit of 2nd ACP w.e.f. 19.12.2003 by ignoring the ACR for the period (01.04.98 to 14.10.98, 15.10.98 to 31.03.99, 1999-2000, 2000-2001, 01.04.01 to 10.10.01, 11.10.01 to 31.03.02, 22.07.03 to 31.03.04, 2004-05, 21.08.06 to 21.03.07) with all consequential benefits including seniority and promotion and pay & allowance.

8.2 To set aside the ACR for the period (01.04.98 to 14.10.98, 15.10.98 to 31.03.99, 1999-2000, 2000-2001, 01.04.01 to 10.10.01, 11.10.01 to 31.03.02, 22.07.03 to 31.03.04, 2004-05, 21.08.06 to 21.03.07) to the extent whereby the applicant has been graded as ‘Fair’ or ‘Moderate’.

Or/and

Any other relief which this Hon’ble Court deems fit and proper may also be awarded to the applicant.”

3. At the time of hearing, learned counsel for applicant brought to our notice the order passed by the Hon'ble High Court of Delhi in the case of Union of India Vs. V.S. Arora in WP (C) No. 5042/2002 dated 31.05.2012. The Hon"ble High Court, after considering various judgments of Hon'ble Supreme Court, came to the conclusion that if the CRs of the relevant period are not available then, the DPC should consider the CRs of the years preceding to the period in question. The relevant portion of the judgment is extracted below :

“ 24..... The relevant portion of the guidelines reads as under:-

“6.2.1. Confidential Rolls are the basic inputs on the basis of which assessment is to be made by each DPC. The evaluation of CRs should be fair, just and non-discriminatory. Hence –

(a) The DPC should consider CRs for equal number of years in respect of all officers considered for promotion subject to (c) below.

- (b) The DPC should assess the suitability of the employees for promotion on the basis of their Service Records and with particular reference to the CRs for **five preceding years** irrespective of the qualifying service prescribed in the Service/ Recruitment Rules. The ‘preceding five years’ for the aforesaid purpose shall be decided as per the guidelines contained in the DoP&T,O.M.No. 22011/9/98-Estt. (D), dated 8-9-1998, which prescribe the Model Calendar for DPC read with OM of even number, dated 16-6-2000. (If more than one CR have been written for a particular year, all the CRs for the relevant years shall be considered together as the CR for one year.)

XXXX XXXX XXXX XXXX

- (c) Where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if in any case even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per (b) above. If this is also not possible, all the available CRs should be taken into account.

XXXX XXXX XXXX XXXX”

25. From the above, it is clear that the DPC should consider the confidential reports for equal number of years in respect of all the employees considered for promotion subject to (c) mentioned above. The latter sub-paragraph (c) makes it clear that when one or more confidential reports have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if, in any case, even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per sub-paragraph (b) above. If this is also not possible, all the available CRs should be taken into account. We are of the view that the same would apply in the case of non-communicated below benchmark ACRs. Such ACRs would be in the same position as those CRs which have not been written or which are not available for any reason. Thus, it is clear that below benchmark ACRs, which have not been communicated, cannot be considered by the DPC and the DPC is then to follow the same procedure as prescribed in paragraph 6.2.1 (c), as indicated above.”

4. Learned counsel for respondents vehemently contended that the applicant has not made any representation before approaching this

Tribunal, hence, the OA shall not be entertained, however, we are not convinced about this submission.

5. After perusing the records, we are of the view that in terms of the order of Hon'ble High Court extracted above, the OA requires to be allowed. Accordingly, OA is allowed and the respondents are directed to consider giving 2nd ACP to the applicant with effect from 2003, following above referred order of the Hon'ble High Court, with all consequential benefits within two months from the date of receipt of certified copy of this order.

6. There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(S.N. Terdal)
Member (J)

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