

(2018) 11 CAT CK 0109

In the Central Administrative Tribunal

Case No : Original Application No. 2350 Of 2018, Miscellaneous Application No. 2598 Of 2018

Avtar Singh Arora

APPELLANT

Vs

Union Of India Through Its Secretary And Ors

RESPONDENT

Date of Decision : 02-11-2018

Acts Referred:

Citation : (2018) 11 CAT CK 0109

Hon'ble Judges : L. Narasimha Reddy, J;Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : M.K. Bhardwaj, Hanu Bhaskar, Naresh Kaushik

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. The applicant joined the service of CPWD in the year 1983 as Assistant Executive Engineer (E&M). He secured various promotions, and by the year 2012, he became Chief Engineer.

2. The APAR of the applicant for the year 2013-14 was communicated to him. His gradation was given as "Good", which, in terms of evaluation, is below benchmark. On representation dated 14.08.2014 submitted by him, the competent authority, i.e., the Hon"ble Minister for Urban Development, passed an order dated 13.02.2015 upgrading the APAR to the level of "Very Good" by raising the total points to 6.57.

3. For making promotion to the post of Additional Director General (E&M) in the CPWD, the DPC met on 02.04.2016. The name of the applicant was recommended, and he was promoted. The DPC for promotion to the post of Special Director General (E&M) met on 04.12.2017. However, it expressed a view that the upgradation of the APAR of the applicant for the year 2013-14 by the competent authority was not justified. On that basis, it did not recommend the name of the applicant. This OA is filed challenging the minutes of the DPC which

met on 04.12.2017.

4. The applicant contends that the competent authority has upgraded his APAR for the year 2013-14 by assigning cogent reasons, and in fact, such an upgradation was taken into account and treated as valid by the DPC which met for promotion to the post of Additional Director General (E&M). He contends that there was absolutely no justification for the DPC for the post of Special Director General (E&M) to take a totally different and opposite view. Reliance is placed upon certain precedents and office memoranda.

5. The respondents filed a counter-affidavit opposing the OA. According to them, the guidelines issued by the DoP&T are to the effect that whatever be the method of evaluation by the DPC for posts which are lower in the establishment, the evaluation need not be on the basis of the APARs alone, when it comes to the question of promotion to higher administrative positions. It is stated that where the APARs of an officer for the concerned period have been upgraded by the competent authority, it shall be open and legal for the DPC to satisfy itself as to whether such upgradation was justified. It is stated that the DPC has examined the case of the applicant strictly in accordance with the relevant provisions of law, and that there are no merits in the OA.

6. The applicant became Chief Engineer by the year 2012. The APAR for the year 2013-14 was, in a way, detrimental to him. The reporting authority gave the overall grading of 7, which is equal to "Very Good", whereas the reviewing authority awarded 5.63 marks, equivalent to "Good".

The accepting authority agreed with the reviewing authority, and rated the applicant as "Good". Representation was made by the applicant to the competent authority. On consideration of the same, an order was passed on 13.02.2015. Relevant portion of the same reads as under:

"The competent authority has gone through the representation of Shri A. S. Arora, CE (Elect.) and he has found following point worth noting:-

There are three Chief Engineer level officers at Training Institute i.e. CE (Civil), CE (Elect.) and CA (Trg). ADG (Trg) could have assigned the additional work of "Administration" to any of the 3 officers. This work was in addition to the regular work of providing training in domain area.

The competent authority has decided to allow the plea of the officer that he took additional responsibility. Accordingly, his grade point is raised to 6.57."

7. When the case of the applicant was considered for the post of Additional Director General, the DPC cleared him. In the context of promotion to the next higher post, the DPC has undertaken a closer scrutiny and did not recommend his name. The basis for the rejection of the case of the applicant is contained in para 8 of the minutes. It reads as under:

"8. While examining the APAR for the year 2013-14 (from 13.06.2013 to

31.03.2014) the Committee noted that the Reporting Officer has given 7.00 numerical grading and the Reviewing Officer has given final grading 5.63, while the Accepting Authority has given 5.00 numerical grading. The Committee also went through the letter dated 13.02.2015 by which the grade point has been raised to 6.57 by the Competent Authority in the Ministry in which no valid and justifiable reasons for upgrading the said APAR has been specified. The office records also do not present any acceptable reasons warranting to assert the upgradation made by the Competent Authority. The remarks/attributes recorded in various columns of the APAR also do not commensurate with the overall grading. The Committee, therefore, took a conscious decision to grade the officer for the year 2013-14 as "Good" only. Based on this, the Committee assessed Shri Avtar Singh Arora as "Unfit" for promotion to the post of Special Director General (Electrical & Mechanical) in the Central Public Works Department, Ministry of Housing & Urban Affairs for the vacancy year 2018."

8. The applicant contends that when the order passed by the competent authority on 13.02.2015 was not objected to by the DPC which considered his case for promotion to the post of Additional Director General (E&M), there was no basis for the DPC for the post of Special Director General (E&M) in taking a different view.

9. In this regard, it needs to be observed that the higher the level of the post under consideration by the DPC, closer would be the scrutiny of the APARs. The persons to be selected to hold the posts at higher level are required to be of high accomplishments, and unstinted integrity. Seniority and average performance alone will not do. The instructions are to the effect that even where the APARs are consistently "Very Good" for the period in question, the other attributes of the officer, having a bearing on his suitability to the post, need to be examined. The scrutiny is required to be much more where the APAR of any year for the period in question has been upgraded by the competent authority.

10. The DoP&T has been issuing guidelines from time to time in this behalf. The latest of such OM is the one dated 09.05.2014. The manner in which the DPC must undertake the evaluation, whenever there is an upward revision of the APAR by the competent authority, is contained in para 5 of the same. It reads:

"5. It is reiterated that in discharge of its statutory functions the respective DPCs are required to determine the merits of those being considered for promotion with reference to the prescribed bench-mark, by making its own assessment, on the basis of the entries and gradings contained in the APARs and other relevant material facts placed before it, and accordingly grade the officers as "fit" or "unfit". Relevant material would inter alia include the orders of the competent authority on the representation of the Government servant on the entries/grading in APAR. In the event of the DPC deciding not to take cognisance of such an order, on the ground that the same is not a speaking order, the DPC shall make its assessment based on the entries in APAR and other material including the representation of the Government servant. The DPCs should substantiate its

assessment by giving justifiable and sustainable reasons including the cases where the assessment of the DPC is different from the grading in APAR (original or amended after representation by the Government servant)."

This paragraph became relevant in the instant case, since the APAR of the applicant for the year 2013-14 was upgraded by the competent authority. The manner in which this was analysed by the DPC is indicated in para 8 of its minutes, which has been extracted above. The consideration as reflected therein, is the one which is referable to para 5 of the OM dated 09.05.2014. It is challenged in this OA.

11. Though it is not necessary for us to go into the details of the evaluation made by the DPC, we can observe this much that the reviewing as well as the accepting authorities for the APAR in question have furnished cogent reasons in support of their conclusions. The proforma of the APAR required the reporting authority to present a pen picture of the officer under consideration in 70 words (para 4.3 of part IV). That being the requirement, what the reporting officer said about the applicant is as under:

"He is a hard working very good officer"

It can safely be observed that the performance of the reporting officer in this behalf, is far from satisfactory and below average. In contrast, though the reviewing and accepting authorities were required to just indicate as to whether they agree or do not agree with the evaluation made by the reporting officer, they gave elaborate reasons.

12. The competent authority was supposed to point out as to how the evaluation made by the reviewing authority or the accepting authority was defective. However, just by making a brief reference to the representation, the gradation was enhanced to 6.53. Obviously for that reason, the DPC was not satisfied with that.

13. Learned counsel for the applicant placed reliance upon the judgments of the Delhi High Court in *Government of NCT of Delhi and others v Rakesh Benewal and others* [WP(C) No.7423/2013, decided on 04.08.2014]; and *Union of India and others v Amiya Kumar Jena and another* [WP(C) No.1050/2015, decided on 22.08.2016]. The issue in *Rakesh Benewal*'s case was about promotion of the candidates who were appointed through direct recruitment, on the one hand, and those appointed on promotion, on the other. It was more about inter se seniority than the evaluation of APARs by the DPC.

14. The subject matter of the judgment in *Amiya Kumar Jena*'s case was the difference between the evaluation made by the regular DPC, on the one hand, and the review DPC, on the other. In the instant case, the two DPCs which met on 02.04.2016 and 04.12.2017 were for promotion to two different posts, i.e., Additional Director General, and Special Director General. It has already been mentioned that the evaluation for both the posts cannot be same, in view of the

relatively higher administrative and managerial responsibilities.

15. We do not find any merit in this OA. The same is accordingly dismissed. There shall be no order as to costs.