
(2019) 10 CAT CK 0033

In the Central Administrative Tribunal

Case No : Original Application No. 100, 3935 Of 2014

Sub-Inspector (Exe.) Balvinder Singh

APPELLANT

Vs

GNCT Of Delhi And Ors

RESPONDENT

Date of Decision : 11-10-2019

Acts Referred:

Administrative Tribunals Act 1985 — Section 19

Indian Penal Code, 1860 — Section 34, 95, 111, 323, 341, 348

Citation : (2019) 10 CAT CK 0033

Hon'ble Judges : R.N. Singh, J; Aradhana Johri, Member (A)

Bench : Division Bench

Advocate : Sourabh Ahuja, Amit Yadav, Ankur Chhibber

Final Decision : Partly Allowed

Judgement

R.N. Singh, J

1. The applicant, who retired while working as Sub-Inspector (Exe.) in Delhi Police, has filed the present OA under Section 19 of the Administrative Tribunals Act 1985, praying for the following reliefs:

"(a) Quash and set aside orders dated 09/05/2011 and 17/10/2012 to limited extent (as mentioned in para 1 of the OA), whereby the name of the applicant was admitted to Promotion List 'E-1' (Exe.) and Promotion List 'E-II' (Exe.) w.e.f. 15/03/2002 and 07/04/2003 instead of 02/12/1998 and 02/12/1999 respectively. It is submitted that because of the said illegality the Applicant was promoted to the rank of Sub-Inspector (Exe.) w.e.f. 15/03/2002 instead of 02/12/1998, And

(b) Quash and set aside the impugned order dated 17/07/2014, whereby the appeal of the Applicant has been rejected for placing his name before the Review DPC for considering his name for promotion to the post of Sub-Inspector (Exe.) w.e.f. 02/12/1998, And

(c) Direct the respondents to conduct the review DPC (in wake of up-gradation of Applicant's ACRs) qua the Applicant for the post of Sub-Inspector (Exe.) so as to consider his name w.e.f. 02/12/1998 and if the Applicant is found 'FIT' then the respondents may kindly be directed to accord to the applicant the salary of higher post i.e. SI (Exe.) w.e.f. 02/12/1998 along with all consequential benefits such as arrears of difference in pay, along with interest @ 18% p.a. on such arrears and also in that event also re-fix the pension of the Applicant etc., And

(d) To award cost in favour of the Applicant and against the respondents.

(e) To pass any further order, which this Tribunal may deem fit, just equitable in the facts and circumstances of the case."

2. The undisputed fact is that the applicant was considered for admission to Promotion List E-I (Exe.) by the DPCs held on 2.12.1998, 1.09.2000, 15.03.2002, 28.02.2003, 21.10.2004, 11.10.2005, 9.02.2007, 14.12.2007, 12.02.2009, 11.02.2010 and 21.01.2011 but the findings of the DPCs except the one dated 21.01.2011 were kept in sealed cover due to pendency of departmental inquiries dated 12.10.1995 and 9.11.1998 and criminal case FIR Nos.110/95 under Section 348/341/34 IPC and 111/95 under Section 323/348/34 IPC, PS Kanjhawala, Delhi. When the applicant was exonerated from the charges leveled against him in criminal cases as well as in the departmental inquiries and his name was removed from Secret List of DI with effect from 5.08.2005, the recommendations of the DPCs were opened and he was found 'unfit' for admission to Promotion List E-I (Exe.) in view of the recommendations of DPCs held on 2.12.1998 and 1.09.2000. However, the applicant was found 'fit' for admission to Promotion List E-I (Exe.) in view of the recommendations of DPC held on 15.03.2002. Accordingly, he was admitted to Promotion List E-I (Exe.) on ad hoc basis to the rank of SI (Exe.) with effect from 4.05.2011, vide order dated 9.05.2011.

3. On successful completion of his training in Upper School Course, the applicant was promoted to the rank of SI (Exe.) with effect from 8.04.2003 vide order dated 17.10.2012, on officiating basis. However, he was granted notional promotion in the rank of SI (Exe.) for the period from 8. 04.2003 to 10.10.2012.

4. The respondents in their reply have stated that the applicant's name was removed from Secret List of DI with effect from 25.05.1996 vide order dated 25.05.2011 i.e. from the date of its inception. Since his name was removed from Secret List of DI with effect from 25.05.1996, the material facts placed before the regular DPCs held on 2.12.1998 and 1.09.2000 were changed and his case was placed before the review DPC on 22.12.2011 to consider his name for admission to Promotion List E-I (Exe.) drawn on 2.12.1998 and 1.09.2000. The applicant was found 'unfit' as on 2.12.1998 as he could not achieve the bench mark of three 'Good' and above ACRs. He was also found 'unfit' as on 1.09.2000 as he could not achieve the bench mark of 50% 'Good' or above ACRs. He was informed accordingly vide communication dated 11.01.2012.

5. The respondents state that on 16.03.2012, the applicant sought copies of adverse ACRs in which he could not achieve the requisite bench mark in the relevant ACRs resulting into his non-promotion from 1998. He was denied copies of his ACRs in the light of the instructions issued vide DoP&T's OM dated 14.05.2009, which stipulates that the copies of ACRs only can be provided after the reporting period of 2008-2009. The applicant was, however, provided with the grading of his ACRs for the year 1992-1993 to 1998-1999, which were considered for his promotion to the rank of SI (Exe.).

6. It is further stated that thereafter the applicant made a representation to Jt. CP/NR, Delhi for upgradation of his

'Average' ACRs. Through office order dated 16.01.2013, the Jt. CP/NR, Delhi accepted his representation and upgraded his 'average' ACRs for the period 17.11.1993 to 31.03.1996 to 'Very Good'. Thereupon, the applicant submitted his representation dated 4.06.2014 requesting therein that since his ACRs have been upgraded, he may be promoted to the rank of SI (Exe.) from the year 1998.

7. It is further contended that the representation of the applicant dated 4.06.2014 was examined in consonance with the instructions on the subject. It was found that as per DoP&T instructions regarding ACRs, the practice earlier was that only adverse remarks were communicated to the officers reported upon for representation. However, as per latest instructions issued by the DoP&T, if an employee is to be considered for promotion in a future DPC and his ACRs prior to the period 2008-2009, which are reckonable for assessment of his fitness in such future DPCs, contain grading which are below bench mark for next promotion, before such ACRs are placed before the DPC, the concerned employee shall be given a copy of relevant ACRs for representation, if any. It is stated that since the upgraded ACRs are not reckonable in future DPCs as per instructions on the subject, it cannot be taken into consideration by the review DPC.

8. In the light of aforesaid facts and instructions, the representation of the applicant dated 11.04.2014 was rejected vide order dated 17.07.2014 (Annexure - 1). In this background, the applicant has approached the Tribunal with the prayers, as noted above.

9. In response to the counter reply, the applicant has filed rejoinder.

10. Heard Shri Sourabh Ahuja, learned counsel for the applicant and Shri Amit Yadav for Shri Ankur Chhibber, learned counsel for the respondents.

11. The learned counsel for the applicant submits that the impugned order dated 17.07.2014 is result of non-application of mind at the end of the respondents and is also contrary to the order/judgment dated 7.08.2014 passed by this Tribunal in OA 2870/2012, which was affirmed by the Hon'ble High Court of Delhi vide order/judgment dated 2.08.2018 in W.P. (C) No.7742/2018 titled UOI and others Vs. Shri S.P. Singh.

12. In S.P. Singh (supra), this Tribunal allowed the OA with direction to the

respondents to convene a review DPC for the year 2007-2008 and re-consider the case of the applicant therein for promotion to the post of SAG, ITS Group 'A' by taking into account his upgraded ACRs for the years 2004- 2005 and 2005-2006. The review filed by the respondents therein in the OA was dismissed vide order dated 11.07.2017. When the aforesaid orders/judgments dated 7.08.2014 and 11.07.2017 were challenged before the Hon'ble High Court of Delhi in the aforementioned Writ Petition, the same was dismissed. Paragraphs 8 to 11 of the order/judgment dated 2.08.2018 of the Hon'ble High Court, relevant for the purpose of the present OA, read as under:

"8. Thus, while not disputing the position that two of the respondent's ACRs considered by the original DPC now stand upgraded and as a consequence, his service profile as considered by the original DPC stands substantially altered, learned counsel contends that the petitioner cannot hold a review DPC only because of the embargo contained in OM dated 13.04.2010. We deem it appropriate to refer to the said OM in extenso hereinbelow:-

"No. 21011/1/2010?Estt.A

Government of India

Ministry of Personnel, Public

Grievances & Pensions

Department of Personnel & Training

North Block, New Delhi

Dated the 13th April, 2010

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.

The undersigned is directed to say that prior to the reporting period 2008-09, only the adverse remarks in the ACRs had to be communicated to the concerned officer for representation, if any to be considered by the competent authority. The question of treating the grading in the ACR which is below the benchmark for next promotion has been considered in this Department and it has been decided that if an employee is to be considered for promotion in a future OPC 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 OPC, 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.

2. As per existing instructions, representations against the remarks or for

upgradation of the final grading given in the APAR (previously known as ACR) should be examined by the competent authority in consultation, if necessary, with the Reporting and the Reviewing Officer, if any. While considering the representation, the competent authority decides the matter objectively in a quasi-judicial manner on the basis of material placed before it. This would imply that the competent authority shall take into account the contentions of the officer who has represented against the particular remarks/grading in the APAR and the views of the Reporting and Reviewing officer if they are still in service on the points raised in the representation vis-a-vis the remarks/gradings given by them in the APAR. The UPSC has informed this Department that the Commission has observed that while deciding such representations, the competent authorities sometimes do not take into account the views of Reporting/Reviewing Officers if they are still in service. The Commission has further observed that in a majority of such cases, the competent authority does not give specific reasons for upgrading the below benchmark ACR/APAR gradings at par with the benchmark for next promotion.

3, All Ministries/Departments are therefore requested to inform the competent authorities while forwarding such cases to them to decide on the representations against the remarks or for upgradation of the grading in the APAR that the decision on the representation may be taken objectively after taking into account the views of the concerned Reporting/Reviewing Officers if they are still in service and in case of upgradation of the final grading given in the APAR, specific reasons therefor may also be given in the order of the competent authority.

Sd/-

Director"

9. Having carefully examined the captioned OM, we find that the same only states that even if ACRs of any employee prior to the period 2008-2009 are found to be below bench mark, there is no requirement of giving an opportunity to the employee concerned to seek upgradation in respect of those ACRs, but the said OM does not preclude holding of a review DPC in cases where the ACRs of any employee pertaining to periods prior to 2008-09 are upgraded by the Department itself. What thus emerges from a reading of the OM is that the mandate of the DOP&T was that all employees must be given an opportunity to make representations in respect of their 'below bench mark' ACRs from the year 2008-2009 onwards. The said OM however, does not deal with situations similar to the one in the present case, where ACRs for the periods prior to 2008-09, have been upgraded by the employer itself.

10. In our view, holding of a review DPC in respect of the respondent would in fact be a logical consequence of the upgradation of his ACRs. Upon perusal of the captioned OM, we are unable to find any justification on the part of the petitioner in refusing to re-consider the respondent's case by conducting a review DPC. Once the respondent's request for upgradation was acceded to by the petitioner,

the injustice caused to him in the original DPC held in September, 2007, was wiped away, there is no reason as to why the respondent should not get the fruit of the said upgradation of his ACRs on reconsidering his case by conducting a review DPC with the upgraded ACRs.

11. For the aforesaid reasons, we find no infirmity in the impugned orders that are upheld. The writ petition being meritless, is accordingly dismissed."

13. We are of the considered opinion that in view of the judgment of the Hon'ble High Court dated 2.08.2018 in S.P. Singh (supra), the OA deserves to be partly allowed and the same is accordingly allowed with the following directions:

(i) The impugned order dated 17.07.2014 (Annexure - 1) is quashed and set aside;

(ii) The respondents are directed to convene a review DPC for considering the applicant's case for promotion to the post of SI (Exe.) with effect from 2.12.1998 by taking into consideration the upgraded ACRs;

(iii) In such review, if the applicant is found 'fit', the respondents shall consider granting him promotion to the post of SI (Exe.) with effect from 2.12.1998. However, consequential benefits viz. fixation of pay shall be on notional basis;

(iv) On such notional re-fixation of his pay, the applicant shall be entitled for revised pension, arrears of pension, however the applicant shall not be entitled to arrears of pay;

(v) He shall be entitled for interest at the rate of 6% per annum on arrears of pension from the date arrears become due till payment thereof; and

(vi) The aforesaid exercise shall be completed within four months from the date of receipt of a certified copy of this order.

14. In the facts and circumstances of the case, there shall be no order as to costs.