
(2013) 06 GAU CK 0022
In the Gauhati High Court
Case No : Writ Petition (C) No. 572 of 2012

Union of India and Others

APPELLANT

Vs

Rajeshkhare

RESPONDENT

Date of Decision : 11-06-2013

Acts Referred:

Citation : (2013) 3 GLD 914 : (2013) 4 GLT 703

Hon'ble Judges : Iqbal Ahmed Ansari, J; Indira Shah, J

Bench : Division Bench

Advocate : D. Barua, CGC, for the Appellant; U. Dutta, for the Respondent

Final Decision : Disposed Off

Judgement

Iqbal Ahmed Ansari, J.—Heard Mr. D. Barua, learned Central Govt. Counsel, for the petitioners, and Ms. U. Dutta, learned counsel, for the respondent. The respondent-applicant was initially appointed as an Assistant Executive Engineer (Civil), on 21.03.1991, in Central Public Works Department, Government of India. The respondent-applicant was promoted to the grade of Executive Engineer, with effect from 05.06.1995, on pay scale of Rs. 10,000/- to 15,200/-. The promotional post for an Executive Engineer is the post of Superintending Engineer. In terms, however, of Office Memorandum, dated 06.06.2000, issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, a person, on completion of five years of service in the grade of Executive Engineer, is entitled to upgradation in the scale of pay, the upgraded scale of pay being Rs. 12,000/- to Rs. 16,500/-. This upgradation, in the scale of pay, is known as Junior Administrative Grade (in short, JAG), which is, strictly speaking, a non-functional grade inasmuch as Executive Engineer remains, notwithstanding the upgradation of the pay scale of JAG, an Executive Engineer.

2. The respondent-applicant's case has been that he had completed his five years of service, in the grade of Executive Engineer, in the pay scale of Rs.

10,000/- to Rs. 15,200/-, on 05.06.2000 and became eligible to receive the pay scale of JAG on 05.06.2000 itself. The respondent-applicant's grievance has been that despite the fact that he had completed five years of service in the grade of Executive Engineer, he was not granted the benefit of upgradation in the pay-scale mentioned hereinbefore, though the present petitioners, vide office order, dated 7.9.2005, granted, non-functional JAG in the pay scale of Rs. 12,000/- to Rs. 16,500/-, to as many as 134 Executive Engineer (Civil) and the said 134 Executive Engineer (Civil) included some persons, who were junior to the respondent-applicant herein.

3. The respondent-applicant, then, submitted his representation to the petitioners herein, on 23.09.2005, expressing his grievances against the omission to grant him JAG, though his juniors were favoured by granting the said grade. In course of time, the respondent, along with others, was, by officer order, dated 27.09.2007, issued, in this regard, promoted to the post of Superintending Engineer in the pay scale of Rs. 14,300/- to Rs. 18,300/-. The respondent-applicant, upon joining the promotional post of Superintending Engineer, made, once again, a representation, on 21.04.2008, seeking granting of the benefit of upgradation to JAG, but the respondent-applicant did not receive any response to his representation.

4. Aggrieved by the inaction, on the part of the petitioners herein, the respondent-applicant made an application, u/s 19 of the Central Administrative Tribunals Act, 1985, to the Central Administrative Tribunal, Guwahati Bench. The said application came to be registered as Original Application (in short, the OA) No. 148/2009.

5. The petitioners herein, as respondents in the OA, contested the OA by contending, inter alia, thus:

(i) In terms of the Office Memorandum, dated 06.06.2000, aforementioned, an Executive Engineer, on completion of five years of regular service in the pay scale of Rs. 10,000/- to Rs. 15,200/-, is eligible for consideration for grant of non-functional JAG. However, in terms of DOPT guidelines, contained in Office Memorandum, dated 09.10.89, in order to grant to an Executive Engineer upgraded scale of JAG a Departmental Promotion Committee (in short, DPC) has to be constituted, which is required to consider the ACRs of last five years of the officer concerned and, on being satisfied that the overall performance of the officer is good, upgradation, in the pay scale of JAG, is granted provided that a candidate has, at least, two ACRs, during the relevant period, wherein he stood graded as "very good" and that there shall be no adverse entries in any of the ACRs.

(ii) A DPC, in the present case, was held, on 18.03.2012 and 01.04.2012, and it considered, amongst others, the case of the present respondent-applicant too; but the benefit of JAG could not be extended to the respondent-applicant inasmuch as his ACRs, in the relevant period, has had adverse remarks and that

was the reason why the respondent-applicant had not been granted the benefit of JAG.

(iii) The present petitioners' contention that it was because of adverse entries, in his relevant ACRs, that the respondent-applicant had not been granted the scale of JAG, the respondent-applicant contended that he had never been communicated the adverse entries, if any, contained in his ACRs and, in such circumstances, the adverse entries, if any, ought to have been kept excluded by the DPC from the purview of its consideration. In this regard, reliance was placed, on behalf of the applicant-respondent, on *Abhijit Ghosh Dastidar Vs. Union of India (UOI) and Others*,

6. Though the present petitioners, as respondents, insisted, in the OA, that the adverse entries had, indeed, been communicated to the applicant-respondent herein, they produced no such material, which the learned Tribunal could rely upon to hold that the adverse entries, contained in the ACRs of the respondent-applicant, had, indeed, been communicated to the respondent-applicant. This apart, the petitioners, who were respondents in the OA, could also not establish that they had responded or replied to the representations, which the present applicant-respondent had made seeking benefit of the pay scale of JAG.

7. In the circumstances, as indicated above, the learned Tribunal, by its order, dated 04.03.2011, held that since the respondents i.e., the petitioners herein, had failed to prove that the adverse entries, contained in the ACRs, in question, had been communicated to the respondent-applicant, the refusal to grant the pay scale of JAG was wholly illegal and, therefore, directed the respondents to constitute a review DPC in order to consider the present respondent's case for raising the scale of pay to JAG by ignoring the adverse entries in the ACRs, which had not been communicated to him. The learned Tribunal further directed that the respondents, i.e., the petitioners herein, shall pass appropriate order in terms of the finding of the review DPC and communicate the same to the respondent-applicant within three months from the date of receipt of the copy of the order passed by the learned Tribunal.

8. It is the order, dated 04.03.2011, passed, in OA No. 148/2009, which has been put to challenge, in this writ petition, made under Article 226 of the Constitution of India, by the petitioners, who were, as indicated above, respondents in the OA.

9. While considering the present writ petition, it needs to be noted that the question as to whether the adverse entries, contained in the relevant ACRs of the respondent-applicant, had or had not been communicated, was a disputed question of fact and the learned Tribunal, in terms of the provisions of Section 14 of Administrative Tribunals Act, 1985, is competent to decide, on the basis of the evidence, if any, available before it.

10. In the case at hand, since the petitioners herein justified the refusal to grant the pay scale of JAG to the respondent herein by contending what they

contended in the OA, the burden of proving that the adverse entries, if any, in the ACRs of the applicant-respondent, had been communicated to the applicant-respondent lied on the petitioners. As the petitioners herein had failed to discharge this burden, the learned Tribunal was wholly within the ambit of its jurisdiction in directing the present petitioners to constitute a review DPC in order to consider the case of the respondent-applicant for granting him the scale of JAG.

11. Because of what have been discussed and pointed out above, we do not find that there is any merit in the present writ petition and we, therefore, dismiss the writ petition accordingly. We, however, leave the parties to bear their own costs.