

Amresh Kumar Tripathi Vs. Union of India and Others

Amresh Kumar Tripathi Vs. Union of India and Others

SooperKanoon Citation : sooperkanoon.com/938842

Court : Central Administrative Tribunal CAT Delhi

Decided On : Mar-06-2012

Judge : V.K. Bali, Chairman & the Honourable Dr. Veena Chhotray, Member (a)

Appeal No. : Original Application No.1268 of 2011 & MA Nos. 957 of 2011 & 414 of 2012

Appellant : Amresh Kumar Tripathi

Respondent : Union of India and Others

Advocate for Pet/Ap. : For the Applicant: Ms. Jyoti Singh, Sr. Advocate with Ms. Saahila Lamba, Amandeep Joshi, Advocates. For the Respondents: Rajender Khatter, Advocate.

Judgement :

DR. VEENA CHHOTRAY:

1. The applicant is a member of Group 'A' Indian Railway Service of Signal Engineers (IRSSE). He is a 1986 batch officer. The applicant is aggrieved at denial of Senior Administrative Grade to him, even though it has been given to his batch-mates including some juniors vide the impugned order dated 6.3.2009. That the applicant fulfills the prescribed eligibility condition as regards the requisite length of service in appropriate grade for consideration for SAG, is not in dispute. Under the RTI it was disclosed that this was on account of below bench mark

ACR's for the years 2004-05, 2005-06 and 2006-07. In this background, the OA seeks the following reliefs:-

“8. (i) Quash the orders dated 06.03.2009 to the extent to which the applicant has not been promoted to SAG while his junior Shri Sunil Kumar has been promoted.

(ii) Direct the respondent to ignore the ACRs of the applicant of 2005, 2006 and 2007 and reconsider him for promotion to SAG on the basis of ACRs with the cut off ACR of 2004 and in case he is recommended and declared fit for promotion, consequential benefits should be given.”

2. The applicant would be represented by the learned Sr. Counsel Ms Jyoti Singh and the respondents by the learned counsel Shri Rajender Khatter. We have heard the learned counsels carefully and also perused the material on record.

3. In their counter reply, two-fold preliminary objections as to the maintainability of the OA have been raised: (i) Raising multiple issues; (ii) The OA being time barred reckoning the cause of action from the date of promotion of the junior Shri Sunil Kumar i.e 6.3.2009. Besides, Shri Khatter, the learned counsel for the respondents would also raise the legal objection of non-impleadment of the junior, Shri Sunil Kumar as necessary party.

However, on consideration neither of these objections is found to be sustainable. Since the denial of promotion to SAG is averred to be a consequential effect of the below bench-mark ACRs for the period referred, the present OA is not found to be suffering from the infirmity of plural remedies as per rule 10 of The Central Administrative Tribunal (Procedure) Rules, 1987.

Even in respect of the limitation bar, an MA for condonation of delay has been filed. It is submitted that the applicant did not know the reasons for his non-inclusion in the promotion order dated 6.3.2009 (as per the averment in the OA, no communication regarding adverse or below bench mark ACR had been made to him prior to this Order). Therefore, only after resorting to the RTI the applicant came to know the reasons with regard to the ACRs.

Ms Singh, the learned senior counsel for the applicant would submit that the copies of the ACRs in question were received by the applicant on 1.11.2010 and a representation made on 4.11.2010. The same got rejected by the respondents vide their Order dated 5.1.2011 (Annex-A/MA 414 of 2012). The OA in this case was filed on 22.3.2011. Considering the submissions by the learned counsel, we do not find the present case as barred by limitation. Even in respect of non-impleadment, since the basic issue is not about promotion of the junior but denial of promotion to the applicant, hence his non-impleadment is not going to have an effect on the final orders to be passed in the OA.

Hence the preliminary objections raised by the respondents are overruled.

4. In their CA, the respondents have stated about the below bench mark ACRs to be communicated only after the DOP and T's instructions dated 13.4.2010 (Annex R/1). This office memorandum had been issued in the wake of the Apex Court's judgment in *Dev Dutt vs Union of India and Ors* {2008 (8) SCC 725}. Instructions were issued that whereas prior to the reporting period 2008-09 only the adverse remarks in the ACRs were to be communicated; however, from 2008-09 onward even cases where the final gradings are below the bench mark for next promotion, such ACRs would also be required to be communicated.

5. It has also been submitted that the applicant was considered along with others by DPC on 24.4.2008 and 17.8.2011. However, he could not be promoted as he was not found fit by the DPCs in both the panels. Further, it is stated that the DPC had assessed the suitability for promotion on the basis of his service record with particular reference to the five preceding years.

6. The material on record before us reveals that the respondents vide their order dated 5.1.2011 had rejected the applicant's representation against the below bench mark for the years 2004-05, 2005-06 and 2006-07. For all these years, the applicant had been assessed with the final grading of 'Good' against the bench mark of 'Very Good'. However, a perusal of the enclosed analytical note of the year-wise ACRs shows that in these cases, the reporting officer, the reviewing officer as well as the accepting authority were not in service due to superannuation / voluntary retirement or demise. In these circumstances, the incumbent General

Manager at the time of consideration of the representation had taken a view after verifying the targets and achievements mentioned in the ACR and the representation.

7. Ms Jyoti Singh, the learned senior counsel for the applicant would argue about the course of action adopted by the respondents in the present case as not being in consonance with the principles of fair play or according to law. It would be submitted by the learned counsel that non-communication of the below bench mark ACRs to the applicant before consideration of the case by the DPC in 2008 was violative of the law as propounded by the Hon'ble Apex Court in Dev Dutt's case. Further, it would be submitted that since admittedly the concerned Reporting, Reviewing and Accepting Authorities for all these three years were not in service at the time of consideration of the representation of the applicant, the rejection made by the respondents could not be considered as valid in law. Evoking the decision of the Apex Court in Abhijit Ghosh Dastidar vs UOI and Ors reported in (2009) 16 SCC 146, a contention for ignoring these ACRs while considering the case of the applicant for promotion would be made. The Ld. Senior counsel would also argue that since the junior of the applicant had been promoted in the year 2009 itself, the consideration would be from that point of time.

7.1 To reinforce her arguments, the learned counsel would advert to the following decisions:

OA 3524/2009 V.K. Singal vs UOI and Ors decided on 17.12.2009.

The decision in Ranjana Kale vs Chief Economic Adviser and Anr as upheld by the Delhi High Court in the WP (C) No. 13488/2009 vide its order dated 1.7.2010. The said decision attained finality as the SLP No. 29929/2010 filed by the UOI got dismissed vide the Apex Court's order dated 29.11.2010.

The decision in Sunil Mathur vs UOI case, as upheld by the Delhi High Court vide its order dated 26.7.2010 in the WP (C) 4880/2010. In this case also the Special Leave to Appeal (Civil) No.7623/2011 filed by the UOI was permitted to be withdrawn in view of the Apex Court's judgment in Dastidar's case.

7.2 In all these cases, the view taken was for ignoring the adverse/ below bench mark ACRs where the Reporting/Reviewing Authorities had retired.

8. Shri Rajender Khatter, the learned counsel for the respondents would seek to rebut the rival contentions stating that Dastidar's case was distinguishable as it pertained to a retired officer.

9. Having carefully considered the respective submissions, we are unable to accept the objections raised by the learned counsel Shri Khatter. None of the cases cited by the Ld. Senior counsel for the applicant pertained to a retired Officer's case. Not only at the level of the Tribunal, but even by the High Court and the Apex Court ignoring of adverse / below bench mark ACRs where the Reporting and the Reviewing Officers were no more in active service, had been decided considering Abhijit Dastidar's case.

10. In view of the foregoing, the OA is allowed partly in terms of the following directions:-

Considering the factual matrix, the prayer for quashing the impugned order dated 6.3.2009 is not found acceptable.

The respondents are directed to reconsider the case of the applicant for promotion to SAG, ignoring the ACRs for the years 2004-05, 2005-06 and 2006-07 by constituting a review DPC. In the event of the applicant being found fit, he would be given promotion from the date of his junior.

As a consequential benefit, the applicant would be given notional pay fixation and seniority but not back wages or arrears on that account.

Our aforesaid directions would be complied within a period of 3 months from the date of receipt of a copy of the Order. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com