

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13602 of 2014

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Krishna Chandra Khanna, Son of Sri V.D. Khana, R/o Khare Auto Mobiles, Krishna Bhawan, South Mandiri, P.S. Kotwali, District- Patna at Present Senior Accounts Officer (Com) O/o the Principal Accountant General (Audit), Bihar, Patna.

.... Applicant- Petitioner

Versus

1. The Union of India through the Comptroller and Auditor General of India, New Delhi.
2. The Comptroller and Auditor General of India, 10, Bahdurshah Zafar Marg, New Delhi- 110002.
3. The Accountant General (Audit) AGCR Building, I.P Estate, New Delhi- 110002.

.... Respondents.

4. Shri R.K. Singh, Accountant General (Audit), AGCR Building, IP Estate, New Delhi- 110002.

.... Respondent 2nd Set (Formal party) Respondent

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Appearance :

For the Petitioner : Mr. Munna Pd Dixit (M.P. Dixit), Advocate

For the Respondents : Mr. S. D. Sanjay (A.S.G.)
Mrs. Kanak Verma, C.G.C.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 02-05-2016

The challenge in the present writ application is to an order dated 12th of May, 2014 passed by the Central Administrative Tribunal, Patna Bench, Patna (for short, 'the Tribunal') whereby an Original Application filed by the petitioner for promotion to the post of Assistant Accountant General remained unsuccessful.

2. The petitioner was charge-sheeted on 17.02.2005 and

on 23.06.2008. According to the petitioner, he was charge-sheeted so as to delay and deny him promotion in time. It is also pointed out by the petitioner that the petitioner demanded a copy of the adverse remarks recorded in the ACR 2008-09 and had also submitted representation against the adverse remarks. Such remarks were upheld vide Annexure-A/20 to the Original Application.

3. It is not necessary to make a detailed reference to the charges levelled and the punishment imposed against the petitioner as such matter is subject matter of consideration of C.W.J.C. No.19954 of 2014 which is directed against the order of Censure imposed upon by the competent authority subsequent to the charge sheet dated 23.06.2008 served upon him. The said writ application is being disposed of by a separate order today itself.

4. The stand of the respondents is that as per recent instructions of the Department of Personnel & Training dated 13.04.2010, if any employee is to be considered for promotion in a future Departmental Promotion Committee (D.P.C.) and his ACRs prior to the period 2008-09 contain final grading below benchmark for his next promotion, then relevant ACRs are to be conveyed. The ACRs were conveyed to the petitioner and he was allowed to make representation, but the representation was found to be not of any substance and was rejected. It is also pleaded that the petitioner was

considered for promotion against the vacancies for the years 2007, 2008, 2009, 2010 and 2011, but he was found unfit by the D.P.C.

5. As per facts on record, in respect of consideration for the vacancies of the year 2008 for which meeting of D.P.C. was held on 18.02.2010, the promotion orders were issued in March, 2010 in respect of juniors to the petitioners. The petitioner has been found unfit for promotion against the vacancies for the years 2009, 2010 and 2011 for which D.P.C. was held on 24.11.2010, 08.08.2011 and 14.04.2012 and he was overage for promotion against the vacancy for the year 2012.

6. Learned counsel for the petitioner has argued that ACRs for the period 2003-04, 2004-05 and 2005-06 were communicated on 6th of July, 2010, i.e. after the D.P.C. considered the petitioner and other officers for promotion for the vacancies of the year 2008 on 18.02.2010. Though the ACRs were good, but the benchmark was “very good”. It is argued that such uncommunicated ACRs could not have been taken into consideration while considering the petitioner for promotion. He relies upon the judgments of the Hon’ble Supreme Court in the cases of Dev Dutt Versus Union of India and others, (2008) 8 SCC 725; Abhijit Ghosh Dastidar Versus Union of India and others, (2009) 16 SCC 146; Sukhdev Singh Versus Union of India & others, (2013) 9 SCC 566;

and Prabhu Dayal Khandelwar Versus Chairman, U.P.S.C. & Ors.,
AIR 2015 SC 3057.

7. We have heard learned counsel for the parties and find no merit in the writ application.

8. Though the ACRs for years 2003-04, 2004-05, 2005-06 were communicated to the petitioner after the meeting of the D.P.C., but the fact remains that all the representations stand rejected. There is no change in the grading of the petitioner. The benchmark for promotion against the vacancies for the year 2008 is “very good”, whereas the grading of the petitioner is “good”. Thus, he could not meet the benchmark for promotion.

9. The judgments referred to by learned counsel for the petitioner deal with the question that un-communicated adverse remarks cannot be taken into consideration, but in the present case, though the remarks were un-communicated, but the representation against the adverse remarks have remained unsuccessful. Therefore, there is no change of grading of the petitioner which was considered by the D.P.C. Therefore, merely for the reason that the remarks were not communicated on that day will not be a ground for a direction to the respondents to promote the petitioner when ultimately the representations have been rejected and remarks retained. The petitioner has not qualified the minimum benchmark and, therefore,

his Original Application has rightly been dismissed by the Tribunal.

10. We do not find any merit in the writ application and the same is dismissed.

(Hemant Gupta, J.)

Ahsanuddin Amanullah, J. I agree.

(Ahsanuddin Amanullah, J.)

Sunil/

AFR/NAFR	
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