



2025:UHC:8831-DB

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE MR. G. NARENDAR, C.J.

HON'BLE MR. ASHISH NAITHANI, J

Writ Petition (S/B) No. 350 of 2025

Union of India & Another Petitioners

Versus

Dr. Arti Garg Respondent

Presence:

Mr. V.K. Kaparuwan, learned counsel for the Petitioners.

Mr. Prateek Kanojia, learned counsel for the Respondent.

Per:Hon'ble Ashish Naithani, J.

1. The present writ petition, registered as WP (S/B) No. 350 of 2025, has been filed by the Union of India through the Secretary, Ministry of Environment, Forest & Climate Change, and the Director, Botanical Survey of India, assailing the order dated 24 April 2025 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, while sitting on circuit at Nainital, in Original Application No. 3475 of 2024.
2. By the said order, the Tribunal quashed the speaking order of the Ministry dated 09 August 2024. It directed that the case of the Respondent, Dr. Arti Garg, Scientist 'E', be reconsidered for promotion to the grade of Scientist 'F' under the Flexible Complementing Scheme, by ignoring her Annual Performance Appraisal Reports (APARs) for the years 2021–22 and 2022–23, and by conducting a review by the Departmental Promotion Committee.



3. The Petitioners have come before this Court contending that the Tribunal travelled beyond its jurisdiction in directing exclusion of service records and interfering with the policy-based assessment of suitability for promotion.
4. The Respondent, Dr. Arti Garg, entered the services of the Botanical Survey of India (hereinafter “BSI”) on 04 February 2004 as Scientist ‘B’. She was promoted to Scientist ‘C’ on 11 September 2008, to Scientist ‘D’ on 29 January 2015, and thereafter to Scientist ‘E’ on 04 October 2019. At the time relevant to these proceedings, she had served for over four years in the grade of Scientist ‘E’ and was about 58 years of age.
5. On 04 October 2023, the Petitioners initiated the process for convening a Screening Committee/Departmental Promotion Committee for consideration of Scientists for in-situ promotion under the FCS as on 01 January 2024. The Respondent applied to be considered under Rule 12(5), claiming eligibility on account of completion of more than four years in grade ‘E’. In the course of this, she sought copies of her APARs for the years 2021–22 and 2022–23. Upon receiving the same, she found that she had been graded below the benchmark required for relaxation. The Respondent, therefore, submitted representations dated 14 December 2023 to the Director, BSI, and 15 January 2024 to the Ministry, requesting reconsideration of her gradings and pointing out that procedural irregularities vitiated the APARs.
6. Since no decision was forthcoming on her representations, the Respondent approached the Central Administrative Tribunal by filing Original Application No. 2635 of 2024. By order dated 12 July 2024, the Tribunal directed the Petitioners to dispose of the Respondent’s representations by a reasoned and speaking order. Further, it directed that the interview for promotion be kept in abeyance until such a decision was taken.
7. Pursuant thereto, the Ministry considered the matter and issued a speaking order dated 09 August 2024, whereby the claim of the Respondent for



relaxation under Rule 12(5) was rejected. A subsequent communication dated 30 August 2024 was issued to her, stating that the in-situ promotions for the year 2024 had already been finalized as on 01 January 2024.

8. Aggrieved by the rejection of her claim, the Respondent instituted Original Application No. 3475 of 2024 before the Central Administrative Tribunal, Principal Bench, New Delhi, while sitting on circuit at Nainital. In this application, she assailed the speaking order dated 09 August 2024 as well as her APARs for the years 2021–22 and 2022–23.
9. Her case was that in respect of the APAR for the year 2021–22, the same officer had functioned both as the Reporting and the Reviewing Authority, and the latter had failed to record any independent grading.
10. In respect of the APAR for 2022–23, she contended that the report had been initiated by an officer under whom she had never worked, and the Reviewing Authority had merely appended his signature without awarding any independent marks or grades. On these premises, she urged that the disputed APARs were liable to be ignored. In the alternative, the APARs for the years 2019–20 and 2020–21 ought to be taken into account for assessing her eligibility under Rule 12(5).
11. The Respondent also sought parity with another officer, who, according to her, had been granted the benefit of relaxation, and prayed for consideration of her case either for direct promotion with effect from 26 June 2024, or in the alternative, by convening a review Departmental Promotion Committee to evaluate her case, excluding the disputed APARs.
12. The Central Administrative Tribunal, after considering the submissions, by its order dated 24 April 2025, allowed the Original Application and directed the Petitioners to reconsider the Respondent's claim for promotion to grade 'F' by excluding the APARs for 2021–22 and 2022–23 and by convening a review DPC. It is this order of the Tribunal that is under challenge in the present writ petition.
13. Heard learned counsel for the parties and perused the records.



14. Learned Counsel for the Petitioners submits that the Tribunal exceeded its jurisdiction in effectively rewriting the Respondent's service record and prescribing the manner in which the Screening Committee should assess suitability.
15. It is urged that the evaluation of comparative merit on the strength of APARs and the classification of an officer's record are matters falling within the province of the expert committee, and judicial fora may interfere only on narrow grounds such as illegality, mala fides, or patent procedural irregularity.
16. It is submitted that the Tribunal's direction to ignore the APARs for 2021–22 and 2022–23 amounts to substituting the Tribunal's opinion for that of the competent authorities. According to the Petitioners, once APARs exist on record and are not shown to be illegal on jurisdictional grounds or vitiated by mala fides, they form part of the service dossier that the Screening Committee must necessarily consider.
17. On the Flexible Complementing Scheme, learned Counsel submits that Rule 12(5) contemplates a narrowly tailored exception. It is urged that relaxation of residency from five to four years is conditioned on the officer being "exceptionally meritorious" with "Outstanding" gradings throughout the minimum period. The Respondent did not meet that standard on the strength of the relevant APARs, hence no right to relaxation arose.
18. The learned counsel for the Petitioners emphasise that relaxation is never as of right and must be strictly construed. Any plea of parity with some other officer, even if one existed, cannot be found a claim to equal treatment in the absence of a legal entitlement, since there is no doctrine of negative equality.
19. Meeting the allegations of APAR irregularity, it is submitted that the DoPT (Department of Personnel and Training) framework permits contingency situations where, in the absence of a suitable Reporting



Authority, the Reviewing Authority may initiate the APAR, subject to review at the next higher level.

20. Learned counsel for the Petitioners relies on the DoPT brochure and office memoranda to submit that the preparation, communication, representation, and decision on APARs are governed by structured timelines and designated roles. It is pointed out that the Respondent's representations were duly considered and decided by a speaking order. On this basis, it is urged that the APARs cannot be treated as void or *non est* so as to be excluded from consideration.
21. It is finally urged that the Respondent cannot claim promotion or relaxation as a vested right or insist on consideration on a particular cut-off date or by particular inputs. Even in selection and appointment contexts, there is no indefeasible right to appointment or advancement merely because a candidate is eligible or has completed residency; by parity of reasoning, the Respondent cannot demand a particular outcome or a particular combination of APAR years.
22. Learned Counsel for the Respondent supports the Tribunal's order and submits that the APARs for 2021–22 and 2022–23 stand vitiated by foundational procedural infirmities. It is urged that for one period the same officer purported to act as both Reporting and Reviewing Authority without independent appraisal, and for the other period the APAR was initiated by an officer under whom the Respondent never worked, followed by a mere countersignature without independent grading.
23. It is contended by the learned counsel for the Respondent that these features violate the DoPT architecture, which envisages an immediate superior as Reporting Authority and the next higher authority as Reviewer, with both having actually supervised the officer for the requisite period. Where the Reporting Authority is unavailable, the Reviewing Authority may initiate, but only with review by the next higher level. In such



circumstances, the Tribunal rightly insulated the assessment from tainted inputs.

24. The learned counsel for the Respondent further submits that to the extent any below-benchmark or otherwise adverse gradings were relied upon to deny relaxation, the settled law mandates effective communication with an opportunity of representation and a reasoned decision by a higher authority. Non-communication or ineffective communication is arbitrary and offends fair procedure.
25. On the scope of judicial intervention, learned Counsel clarifies that the Tribunal did not direct promotion on merits nor did it sit in appeal over the Screening Committee's evaluation. Instead, it issued a corrective procedural direction to convene a review committee and to consider the Respondent's case free from tainted APARs, which is well within judicial review when the foundational record is shown to be procedurally flawed.
26. Addressing FCS relaxation, it is submitted that Rule 12(5) is intended to reward exceptional merit, and that when the only obstacle to the Respondent's eligibility is the two infirm APARs, the proper course is to consider contiguous years that truly reflect performance during residency, rather than allow procedurally tainted reports to defeat an otherwise meritorious case. Counsel argues that the Respondent's plea is not for parity in illegality, but for equal treatment among similarly placed Scientists where relaxation has been extended upon clean and valid APARs, and for the application of the DoPT's fairness regime governing APARs and promotions. The Tribunal's direction to convene a review DPC and to consider the Respondent without the disputed APARs is therefore said to be a narrowly tailored and proportionate remedy.
27. The Respondent also points out that the APAR framework expressly provides for representation and objective decision by the competent authority within set timelines, with the possibility of modification of the APAR where warranted. Given the procedural aberrations in the impugned



APARs and the prejudice caused in the matter of relaxation, the Respondent submits that the Tribunal correctly applied the DoPT regime and the Supreme Court's directions on fair appraisal to order reconsideration by a review committee, which is a standard curative mechanism in service law.

28. The essential question is whether the Central Administrative Tribunal was justified in directing the exclusion of the Respondent's APARs for 2021–22 and 2022–23 while considering her case for relaxation of residency under Rule 12(5) of the Recruitment Rules, 2015, and in directing the convening of a review Departmental Promotion Committee.
29. At the outset, it must be noted that under the Flexible Complementing Scheme (FCS) the advancement from one grade to the next is not a promotion in the conventional sense but an in-situ upgradation dependent upon scientific merit, performance record, and minimum residency. The Rules clearly prescribe five years as the minimum period in grade, with a limited exception of four years where the officer is found “exceptionally meritorious” with “Outstanding” gradings in all APARs during the residency period. Relaxation, therefore, is not a right but a conditional benefit dependent on the stringent satisfaction of parameters. The Petitioners are correct in contending that no officer can insist upon relaxation as an entitlement. The law is settled that there is no negative equality, and a wrong concession in one case cannot be invoked to claim parity by another.
30. This Court also bears in mind that judicial review in matters of promotion and assessment is limited. The Court does not sit in appeal over the decision of an expert body. The scope is confined to examining whether the process is vitiated by illegality, arbitrariness, or mala fides. Courts cannot re-evaluate comparative merit or direct that a candidate be promoted. But equally, courts are not powerless to cure procedural



infirmities in the basic service record that is to be considered by the Screening Committee.

31. In the present case, the Tribunal recorded findings that for the APAR of 2021–22, the same officer acted as the Reviewer, furnished both the Reporting and Reviewing Authority, and no independent appraisal. For 2022–23, the APAR was initiated by an officer under whom the Respondent did not serve, and the Reviewer merely appended his signature without assigning independent grades. These are not minor irregularities but go to the root of the APAR process. The DoPT instructions stipulate that the Reporting Officer must have had the requisite period of supervision, and the Reviewer must make an independent assessment. Where the Reviewing Officer initiates the report, it must be subjected to further review at the next higher level. Non-compliance with these safeguards undermines the reliability of the appraisal.
32. The Petitioners contend that since representations were considered by a speaking order dated 09 August 2024, the APARs cannot be treated as void. However, the speaking order itself did not cure the fundamental defect of the same officer acting in two capacities, or of a person with no supervisory connection initiating the report. In effect, the Respondent was assessed on the basis of APARs, which did not satisfy the minimum procedural requirements of independence and supervision. The Tribunal was therefore justified in holding that such APARs could not be the determinative basis for denying relaxation.
33. The Tribunal's direction does not amount to usurping the role of the Selection Committee. It did not order the promotion of the Respondent. It merely directed that her case be considered by a review DPC, excluding the tainted APARs, and substituting them with the immediately preceding years. Such a course has been recognised in service jurisprudence as a permissible corrective where specific APARs are found vitiated. The



Screening Committee retains its full discretion to evaluate suitability, but it must do so on the basis of valid and lawful records.

34. This Court also takes note that the FCS requires consideration of the officer's entire performance record, but it is not alien to the scheme of service law that where certain years are rendered unusable by procedural illegality, contiguous years may be substituted to ensure fair assessment. The object of Rule 12(5) is to identify exceptionally meritorious scientists; that object cannot be frustrated by reliance upon APARs which do not conform to basic norms of fairness.
35. In view of the above, the reasoning of the Tribunal appears to be consistent with established principles of service jurisprudence. While the Petitioners are correct that courts must tread cautiously in matters of promotion, the direction here is confined to removing tainted inputs from consideration and ensuring a lawful reconsideration. This falls squarely within the corrective jurisdiction of the Tribunal.

ORDER

In light of the foregoing discussion, this Court finds no error of jurisdiction or perversity in the order dated 24 April 2025 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, while sitting on circuit at Nainital, in O.A. No. 3475 of 2024. The Tribunal has not conferred any right of promotion upon the Respondent but has merely directed that her case be reconsidered by a review Departmental Promotion Committee, without taking into account the disputed APARs of 2021–22 and 2022–23, which were found to be procedurally infirm. Such a direction is consistent with the settled principles of service law and does not warrant interference in exercise of writ jurisdiction.

Accordingly, the writ petition fails and is hereby **dismissed**.



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The Petitioners are directed to comply with the order of the Tribunal within a period of twelve weeks from the date of receipt of a certified copy of this judgment.

It is clarified that this Court has not expressed any opinion on the comparative merit of the Respondent or on her entitlement to promotion. The review Departmental Promotion Committee shall be at full liberty to take a decision in accordance with law and on the strength of valid service records, uninfluenced by any observation in this judgment.

There shall be no order as to costs.

G. NARENDAR, C.J.

ASHISH NAITHANI, J.

Dated: 17.09.2025
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