

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2881 OF 2013
WITH
CIVIL APPLICATION NO. 2667 OF 2017

Rajamohan Sutrave }
Scientific Officer-SE, }
National Center for Radio }
Astrophysics, Radio }
Astronomy Center, Post Box }
No. 08, Udhagamandalam }
(Ooty) - 643 001, }
Tamilnadu, India. } Petitioner

versus

1.The Council of Management}
Tata Institute of }
Fundamental Research, }
Homi Bhabha Road, Colaba, }
Mumbai - 400 005, }
through its Chairman having }
office at Sir Dorabji Trust, }
Bombay House, 24, }
Homi Modi Street, }
Mumbai - 400 001. }
}
2. The Director, }
Tata Institute of }
Fundamental Research, }
Homi Bhanha Road, Colaba, }
Mumbai - 400 005. }
}
3. The Centre Director, }
National Center for Radio }
Astrophysics, Tata Institute }
of Fundamental Research, }
Pune University Campus, }
Post Bag 03, Ganeshkhind, }
Pune - 411 007. } Respondents

Mr. R. V. Desai - Senior Advocate i/b.
Mr.Chetan C. Agrawal for the petitioner.

Mr. K. M. Naik - Senior Advocate i/b.
Mr.S. P. Salkar and Mr. Hemant Telkar
for the respondents.

**CORAM :- S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

**Reserved on 20th November, 2017
Pronounced on 22nd December, 2017**

JUDGMENT :- (Per S. C. Dharmadhikari, J.)

1. By this petition under Article 226 of the Constitution of India, the petitioners seeks a writ of mandamus or any other appropriate writ, order or direction to grant time-bound promotion to the petitioner in the capacity of Scientific Officer-F and further in the capacity of Scientific Officer-G with retrospective effect with all consequential benefits within stipulated period. We would refer to the amended prayers a little later once we note the few facts. Prior to that, it is necessary to state that the petitioner is an employee of the Tata Institute of Fundamental Research (hereinafter referred to as the "TIFR"). He has impleaded the Council of Management, the Director and the Centre Director of this institute as party respondents, as, in his view, the Union of India-Central Government bears 99% of the expenditure of this institute.

2. The petitioner, while instituting this petition, was serving as a Scientific Officer-E, National Center for Radio Astrophysics, Radio Astronomy Center, Udhagamandalam (Ooty), Tamil Nadu. It is stated that this institute was founded by none other than Shri. Homi Bhabha. It was founded on 1st June, 1945 with patronage and active support extended by the Sir Dorabji Tata Trust. The institute was first functional at Bangalore and then moved to Bombay. After setting out the entire history of this institute, its achievements, the petitioner states that he has completed his Bachelor of Engineering (Mechanical) degree course in the year 1982 from Mysore University. After completion of his degree course, the petitioner worked with M/s. Karnataka Power Corporation from December, 1982 to August, 1984 as Junior Superintendent. Then, he served at the Raipur Thermal Power Station from August, 1984 to February, 1986. The petitioner then worked at Jakham Irrigation Project, Dhariawad Udaipur, Rajasthan as Resident Engineer from March, 1986 to mid November, 1987, Varahi Project from November, 1987 to January, 1988, M/s. Dodsall Pvt. Ltd., Cross Country Gas and Oil Pipe Line contractors from January, 1988 to September, 1990, M/s. Eastern Coal India Limited from 1991 to September, 1992. In the year 1992, after going through the complete selection process, the petitioner was selected in the capacity of

Engineer – Scientific Officer-D grade with National Center for Radio Astrophysics (NCRA) and the petitioner joined the office of Giant Meterwave Radio Telescope (GMRT) on 14th October, 1992 as a Scientific Officer-D at Narayangaon, Pune. During the working period at Giant Meterwave Radio Telescope (GMRT), the petitioner carried out many skillful and important works on the said project.

3. The petitioner then sets out his achievements and says that he was instrumental in number of scientific and technological developments and advancements. The petitioner states that because of his honesty, hard work and efficiency at work place, he received an appreciation in the mode of promotion from Scientific Officer-D to Scientific Officer-E grade from August, 1998. The promotion order was passed in the year 2000, but with retrospective effect from 1998. The petitioner states that the TIFR has its own promotion norms. The promotion depends on the basis of assessment of performance of the employees and that is the grading and remarks by the reporting and counter signing officer. The petitioner states that while granting promotion grade to any employee working as Scientific Officer, the performance is judged on the basis of the ratings. The performance is rated and the norms in relation thereto are referred to by the petitioner at

pages 11 and 12 of the paper book and a copy of the same is annexed as Exhibit - 'A' collectively.

4. Then, the petitioner states that he rendered his services with utmost integrity and competence. During his service, at no point of time, he received any memo or show cause notice nor any charge-sheet was ever served, much less any Departmental Inquiry was initiated against him for any misconduct. At no point of time, the petitioner received any adverse remarks in his annual performance report. The petitioner noticed that in the matter of granting him promotion, the respondents did not consider his claim, but overlooked him. He made several representations, but all of them fell on deaf ear. The petitioner states that initially he was of the view that there might be a policy of the management of granting promotion collectively to the officers cadre wise. However, the information in relation to such policy was never provided to him. Even his application invoking the Right to Information Act, 2005 was replied, but without providing any particulars. In the month of July, 2012, the petitioner sought information about the promotions and which he felt were granted to the officers of his grade. The petitioner received information in the form of a letter dated 13th September, 2012, by which, he could gather that officers junior to him in the

cadre and who have joined services after him were granted promotion to the higher grade. Thus, 13 junior employees have been granted promotion by superseding the petitioner without any legal justification. It is in these circumstances, relying upon this letter, copy of which is at Exhibit - 'D', the petitioner states that despite serving the institute for more than 14 years and working diligently and honestly so also maintaining the requisite grades/ratings, the petitioner has not been promoted. If the petitioner earned rating of "outstanding" for six years, which is required for granting promotion and grading "good" for 8 years, then, the petitioner qualifies for the promotion. As stated above, the petitioner reiterated that he was never served with any adverse remarks on his performance of the past 14 years and it is in these circumstances, he alleges that depriving him of promotion violates the mandate of Article 14 of the Constitution of India. The petitioner states that he maintained silence expecting that the wrong will be corrected, but there was no hope left of any justice being done to him.

5. Then, the petitioner alleges that without any justification, the petitioner was shifted from the work place. Since February, 2005, he was harassed without any cause. In February, 2005, the petitioner's wife was sick and not stable. Though the

petitioner was posted at Narayangaon, he came to be transferred to Ooty in Tamil Nadu. The petitioner was compelled to move his wife to Dharwad in the State of Karnataka, where she was under medical treatment. The petitioner proceeded on Earned Leave, Medical Leave from 3rd February, 2005 and ultimately joined the services at Ooty on 29th June, 2005. The petitioner claims that for the said leave period, he forwarded telegrams and medical certificates to the authorities and prayed for grant of Earned Leave, Medical Leave and if all leaves are exhausted earlier, then, Leave Without Pay on medical ground.

6. The petitioner states that as per his knowledge, total leave of 102 days was to his credit, which could have been availed of by him and granted by the respondents. After resumption of duties at Ooty, the petitioner corresponded and prayed for release of salary from February to June, namely, 28th June, 2005. The petitioner was in need of money and finance so as to meet the medical expenses. The petitioner also faced a Medical Board test as directed by the respondents. Still, his salary was not released. His representations were not answered or replied. For the first time in February, 2010, the petitioner received a letter from respondent no. 3 that his salary for the above period cannot be released on the principle of “no-work-no-pay”. The petitioner was

shocked and surprised to receive this letter. The petitioner maintained that he was not absent without intimation or information and he informed the authorities about his wife's illness. It is in these circumstances and when the petitioner was also under stress and being ill required to undergo medical treatment, even the said reports were duly forwarded. Despite this record being available with the respondents, they subjected him to a test by the Medical Board. Even after all this, the leave was not sanctioned and the salary was not paid. The petitioner states that this harassment continued and when at Ooty, though there was a vacant service quarter, the petitioner was compelled to reside at a guest house. That was in forest area. That adversely affected his wife's health and equally that of the petitioner.

7. At page 18 of the petition, the petitioner states that to encourage and boost the enthusiasm of the staff working with the respondents, the respondents commenced the "Performance Related Incentive Scheme" from 2009 which provided 20% of basic, grade pay and D. A. per month for five years. The condition to receive the said incentive is that annual performance report of the employee should be "Good" and above. The incentive amount is being paid six monthly every year i.e. April and September of

each year. In spite of best performance and at no point of time, the petitioner receiving any adverse remarks; he was isolated while releasing the said incentive amount. The other employees received the said incentive timely. However, after making lot of correspondence, the petitioner was paid incentive in the month of June 2011 which was due from September 2010 to April 2011. For every eligible benefit the petitioner is compelled to enter into correspondence. No reply is received by the petitioner from the respondents. The copies of the representations/correspondence are annexed as Exhibit - 'H' collectively.

8. The petitioner states that he was working tirelessly and with utmost sincerity. The petitioner sought additional responsibilities also. The petitioner did not obtain any favourable response from the respondents and the correspondence with a request to provide him additional duty is annexed as Exhibit - 'I' collectively. Thus, the petitioner alleges that the respondents treated him in a biased and prejudicial manner. They discriminated and without any reasonable cause. It is in these circumstances that the petitioner moved this court to challenge the denial of salary from 3rd February, 2005 to 28th June, 2005 and prays that the communication dated 11th February, 2010, copy of which is annexed as Exhibit - 'F' be quashed and set aside.

9. Then, the petitioner amended the petition and states that after the same was filed, the officers of the third respondents contacted him and sought his response in order to settle the matter amicably. On or about 16th June, 2013, in a telephonic conversation, the petitioner was asked to add further comments, if he wishes, to his work report already submitted. The petitioner was informed that there is an interview of the Review Committee. The petitioner was then asked to appear and remain present for an interview on 15th July, 2013 at Pune. He was asked to make a brief presentation highlighting his achievements before the Assessment Committee. The petitioner states that on 2nd July, 2013, he forwarded an e-mail and together with that, he sent his updated work report for the period from August, 1998 till June, 2013. The copies of these documents are annexed as Exhibit - 'J' and 'K'.

10. The petitioner also gave a representation on 15th July, 2013 requesting the respondents to consider his case for two promotions. The copy of this letter is at Exhibit - 'L'. The petitioner was informed on 31st July, 2013 that based on the detailed assessment and recommendation of the Review Committee, the respondents are offering him a promotion to the level of Engineer-F in the pay band as stated in the letter dated

31st July, 2013, copy of which is annexed as Exhibit - 'M'. Thereafter, the petitioner received a letter dated 4th September, 2013 informing him about his promotion and the benefits, including the grade pay with effect from 1st July, 2012. However, the petitioner submits that he was entitled for two promotions as per the norms, but the respondents granted him only one promotion. The petitioner submits that as per the TIFR promotion norms, he was entitled to promotion to Engineer - SO-G grade during 2012-13. The second promotion was not granted without any justification and for reasons best known to the respondents. The petitioner relies upon Exhibit - 'N', which is a copy of the letter dated 4th September, 2013. It is in these circumstances, the petitioner amends the petition and then says that once there was no adverse material, then, as per the admitted norms, the petitioner should have been granted promotion from Engineer-E to Engineer-F in the year 2004-05 and Engineer-F to Engineer-G in the year 2012-13. The promotion granted and that too only one, namely, from Engineer-E to Engineer-F with effect from 1st July, 2012 is bad in law and deserves to be set aside to the extent that the petitioner should be promoted with effect from 2004-05. It is in these circumstances the further promotion from Engineer-F to Engineer-G should also be granted.

11. The petitioner is, therefore, relying upon the amended petition and particularly pages 19-A to 19-D. The petitioner, therefore, adds the following prayers in the petition:-

“B-1) this Hon'ble Court be pleased to call upon the record and proceedings of the assessment/review committee established by the respondents time to time for recommending promotions and verify the legality and perversity in the recommendations specifically in the case of petitioner and upon verifying the same the respondents be directed to promote the petitioner to grade Engineer SO-G as per the norms of respondents;

B-2) This Hon'ble Court be pleased to call upon the record and proceedings of the Assessment/Review Committee established by the respondents time to time for recommending Promotion and verify the legality and perversity in the recommendations specifically in the case of the Petitioner and upon verifying the same, the Respondents be directed to promote the Petitioner to the Grade Engineer-F with effect from 2004-2005 and further to the Grade Engineer-G with effect from 2012-2013.

B-3) This Hon'ble Court be pleased to quash and set aside the Order of Promotion in the Grade Engineer-F with effect from 1st July, 2012 granted to the Petitioner vide communication dated 31st July, 2013 to the extent that the petitioner is promoted w.e.f. 01.07.2012 instead 2004-2005.”

12. On a copy of this petition together with its annexures being served, an affidavit in reply was filed by the TIFR and firstly, it is urged that the petitioner was in the employment of the establishment of respondent no. 1 at Ooty in the State of Tamil Nadu. The cause of action for filing the present petition has not arisen within the territorial jurisdiction of this court. Hence, this court has no jurisdiction to entertain and try this petition.

13. Then, it says that the present petition suffers from gross delay and laches. The petitioner is claiming promotion on the ground that he has not been promoted since last 14 years or more. He is also claiming salary for the period from 3rd February, 2005 to 28th June, 2005. It is submitted that both the claims suffer from gross delay and laches and the petition deserves to be dismissed on this ground alone.

14. Alternatively and without prejudice, on merits, it is stated in para 8 of this affidavit at pages 153-154 as under:-

“8. I further say that the Committee to review the performance of the Petitioner and to recommend promotion met thrice on 16.3.2012, 14.6.2012 and 4.6.2013. On first two occasions, the Committee did not recommend promotion to the Petitioner. However, in the third meeting, the Committee proposed to have an interactive meeting with the Petitioner. This interactive meeting was held on 15.7.2013. Based on this interactive session, the Petitioner was granted promotion by the Respondent vide its letter dt. 31.7.2013 to the level of Engineer-F w.e.f. 1.7.2012. I say that the said promotion was accepted by the Petitioner vide his letter dt. 12.08.2013, though without prejudice, and hence nothing survives in the present Petition and the same needs to be dismissed at the threshold itself. Hereto annexed and marked as **EXHIBITS “A” AND “B”** are copies of the said promotion letter dt. 31.7.2013 and the letter dt. 12.8.2013 of the Petitioner respectively.”

15. Hence, it is stated that the petition deserves to be dismissed, particularly because there is no fundamental or legal right of being promoted, but only of being considered for promotion. Ultimately, promotion is a prerogative of the

employer. He may promote an employee if that promotion is to be earned on merits by, applying objective standards to judge the merit of the competing candidates. The most meritorious amongst the competing candidates would have to be picked for appointment. If the petitioner participates in that process or his claim for promotion being considered otherwise, then, no grievance can be made merely because eventually the promotion was not granted. In matters of promotion, the employer is the best judge of the administrative and management skills of his employees and their abilities. A court of law cannot substitute its views with that of the employer on the point of promotion. More so, when a committee has been set up to consider the cases of promotion and it has indeed judged the merits of all eligible candidates. In paragraph nos. 12 and 13, the affidavit in reply states as under:-

“12. I say that the Petitioner was issued Memos twice, (i) Memo dated 13.6.2005 for the lack of devotion to his duty and for the total disregard to the instructions given by his higher authorities and the second Memo dated 29.9.2005 for his unauthorised absence from 3.2.2005 to 26.6.2005. Both of these Memos, though received by him, have not been replied by the Petitioner. Therefore, his contention that his past service record was unblemished is false.

13. I say that in the past, the Petitioner was reprimanded by the Respondent Centre's Director, vide his letter dated 3.2.2005 for his act of misconducts for using unparliamentary/foul language against the officers of the Respondent Institute in the presence of not only the Centre Director but also in the presence of his Reporting Officer. I therefore say that the contention of the Petitioner that his service record is unblemished, is false.”

16. Thus, on the point of release of salary from the period 3rd February, 2005 to 28th June, 2005, apart from the ground of delay, the TIFR says that the said period has been determined as unauthorised absence from duty. Upon the petitioner's transfer to Ooty, he was issued many letters and memos, the details of which have been set out in para 15 of the affidavit in reply, to forthwith report at the transferred place. However, the petitioner unauthorisedly remained absent. It is stated that the petitioner himself says that he underwent a medical examination at the hands of the District Civil Surgeon at Dharwad. The unauthorised absence of the petitioner for this period is thus explained by the petitioner himself. If he stayed away from work, but without any sanctioned or authorised leave, then, he does not earn any wages and this period, therefore, would have to be considered as no-work-no-pay. Further, the petitioner never complained that he was not allotted any quarter on appointment at Ooty. In fact, he was allotted a guest house accommodation at Ooty upon his assuming the office there. The petitioner was already in possession of a quarter at Narayangaon. On transfer, the petitioner was allotted a suitable quarter at Ooty with a condition that he should first vacate the quarter at Naraongaon, which he was already occupying before occupying the quarter at Ooty. Thus, he was warned that two housing accommodation

cannot be retained by the employee. It is in these circumstances, it is denied that any arbitrary or discriminatory treatment was given to the petitioner, much less the petitioner's transfer is malafide and his complaint and grievance in that regard is an afterthought and in any event, baseless. It is stated that the petitioner cannot contend that he invented some technology and developed it. The nature of the job on which the petitioner was recruited was to oversee the erection and fabrication of large antenna structures and not to invent/develop new and advanced technologies. He was part of a team led by Professor Govind Swarup-Project Director and Shri. S. C. Tapde-Project Manager. He had colleagues with similar educational qualification and experience. The entire job of erecting and fabricating the antenna structures was outsourced to two outside contractors and the petitioner's job was to supervise and inspect the work done by the said contractors. It is argued that the petitioner's work is of routine nature. Then, in para 22, it is stated that the petitioner was promoted as Engineer-E with effect from 1st August, 1989, but as per the promotion norms and which are prevalent in TIFR and which keep on changing from time to time, the petitioner's case/claim was considered for further promotion. After the Sixth Pay Commission Recommendations, it is evident that the norms cannot remain static. It is stated that the Departmental

Promotion Committee evaluates the work of each employee and based on his/her confidential reports, make appropriate recommendations to the Centre Director. Thus, all the allegations by the petitioner are denied. We need not refer to the rest of the paragraphs of this affidavit for the first respondent has denied that the petitioner was eligible for two promotions as claimed. The other paragraphs of the affidavit point out as to how the Performance Related Incentive Scheme operates and in the backdrop of the Confidential Report/grading and attendance record of the previous year. Thus, though the petitioner was appraised of all the procedures and was well aware of the same, yet, makes a baseless claim.

17. There is a rejoinder affidavit filed by the petitioner to this affidavit in reply, in which, he reiterates the averments in the petition and says that he made several representations against the refusal of promotion. He was never charged with any misconduct. It is clear that he admits that in the year 2005 he was eligible to promotion of Engineer-F and in the year 2013 he was eligible for further promotion Engineer-G grade. However, after filing of the petition, by letter dated 31st July, 2013 (Annexure 'M') at page 149 of the paper book, the respondent no. 1 granted promotion to the level of Engineer-F from 1st July,

2012, which he claims, he has accepted under protest and without prejudice to his contentions in the writ petition. The petitioner claims that he should have been promoted with effect from 2005 itself. The petitioner admits that the Performance Related Incentive Scheme was implemented by the TIFR from 2009 to encourage the staff. It is stated that the only condition which is required to be fulfilled for this incentive to be earned is that the entries in the confidential reports should be “good” and above. He says that he has received the incentive which proves beyond doubt that his performance is not average. Further, no adverse communication was received by him regarding his performance. He, therefore, denies the stand of the first respondent in the affidavit in reply and reiterates that he was denied salary for the period from February, 2005 to June, 2005, but on a principle no-work-no-pay, which is inapplicable. The petitioner has virtually incorporated the whole petition in his rejoinder affidavit. Then, what we have is an additional reply affidavit of the respondents and it is to the amended writ petition. In this additional affidavit in reply, at para 4, running page 253, 254 and 255, it is stated as under:-

“4. With reference to the amended para 4-Y of the Petition, I deny that the Petitioner did not receive any adverse remark about his performance report while discharging duties, as alleged. I say that the Petitioner's statement that the respondents neither communicated any adverse remarks is grossly incorrect and totally baseless.

The petitioner was issued the following communications during the period from 1998 to 2012.

Sr. No.	Date of Communication	Particulars	Issued by	Subject	Exhibit Page No.
1	5 Oct 2002	Email	Observatory Director	(a) To show higher degree of maturity, (b) to rise to the occasion when needed, (c) display a high degree of responsibility	Annexed with this Affidavit
2	3 Feb 2005	Reprimand	Centre Director	Non-cooperation with women's cell, arrogant behaviour and use of unparliamentary language with the members of women's cell. Was asked to tender unconditional apology	173
3	13 Jun 2005	Memo	Dean	Show Cause: Unauthorised absence	174
4	27 Jun 2005	Reply	Centre Director	Unauthorised absence, and other issues liable for disciplinary action.	175
5	29 Sep 2005	Memo	Centre Director	ShorCause: Break in service.	176
6	5 Feb 2005	Reply	Centre Director	Quarter allotment at Ooty, non-vacation of quarters at Narayangaon	Sr. no. 12 of List of Docs. Of Respondents (pg. 185)
7	14 Feb 2006	Reply to the letter addressed to the Hon. President of India	Registrar	Transfer, Regularization of absence.	Sr. no. 13 of List of Docs. Of Respondents (pg. 186)

8	12 Apr 2007	Reply	Centre Director	Notice for disciplinary action in view of non-cooperative attitude at various instances and long unauthorised absence.	Pg. 188 (List of documents)
9	17 Jun 2009	RTI Reply	Centre Director	Women's cell proceedings, transfer, promotion, EOL etc.	Exh. "C" to WP (Pg. 60)
10	11 Feb 2010	Reply	Centre Director	Leave, Transfer, Facilities, accommodation and PROMOTION. (Special emphasis on Promotion.)	Exh. "F" to WP (Pg. 88)

”

18. It is in these circumstances, it is reiterated that the promotion order dated 31st July, 2013 is not contrary to law and the petitioner was not entitled to such promotion with effect from 1st July, 2012. It is the overall performance which has been considered. It is stated that promotion at a senior level to be granted requires inputs from various authorities. Even a self assessment by the candidate is placed before a Review Committee. It is the Review committee which evaluates the performance of the eligible candidates. It is in these circumstances, it is stated that when the promotion is merit based, there is no vested right, which can be claimed in it. By this

affidavit dated 3rd March, 2017, once again, it is urged that the petition be dismissed.

19. It is on the above materials that we have heard Mr. R. V. Desai appearing for the petitioner. He would submit that the adverse remarks and which are incorporated in the additional affidavit in reply, copy of which is at Annexure 'A' were never communicated to the petitioner. On un-communicated adverse remarks, the promotions cannot be denied. Mr. Desai submits from page 23 of the paper book, it is clear that Entry 5 level norms are precise. The assessment grading to be considered is the one given by the Promotion Committee. It is the staff member whose work performance is assessed to be outstanding, based on confidential reports, who must be interviewed by the Promotion Committee and it must confirm the outstanding grading before recommending him for promotion. Mr. Desai would submit that there may be notes below these norms, but eventually, the promotion is based on gradings. Since the performance of the petitioner was graded as above satisfactory, he deserved a promotion. It is claimed that the reasons for not granting a promotion, when it was due are now set out purely as an afterthought and to prejudice this court. If there was no communication of the adverse remarks or reasons for non

promotion, then, it demonstrates as to how the first respondent violated the mandate of Articles 14 and 16 of the Constitution of India. Our attention is invited to the rejoinder affidavit and particularly at page 219 of the paper book to submit that the petitioner deserves promotion and from the year 2005 itself. Thus, he is entitled to a retrospective promotion. It is the first respondent, which has deprived him of his opportunity to make representation against the Annual Confidential Reports now relied upon. If that is the position, then, the TIFR cannot blame the petitioner for the delay and laches allegedly occurring in filing this petition. The TIFR cannot justify its acts of denying promotion with effect from 2005 by relying on these Annual Confidential Reports or the entries therein, once they were not communicated.

20. Mr. Naik-learned senior counsel appearing for the first respondent would submit that it is important to peruse prayer clause (a) of the petition. If that is perused, it is evident that the promotion is not time bound. It has not been made time bound by any rules. There are certain guidelines issued and in that regard, our attention is invited to page 23 and page 214 of the paper book. If there is no provision for any time bound promotion, but it is merit based, then, so long as there are no materials establishing

and proving malafides, this court should not interfere in its writ jurisdiction. The exercise carried out by the first respondent is not arbitrary, capricious or illegal. There are no malafides legally or factually pleaded. Rather, there is a gross suppression of material facts. For these reasons, it is submitted that the writ petition be dismissed. Our attention has been invited to page 87 (Annexure 'F') of the paper book in that regard.

21. The petitioner understands and properly that he has no right of being promoted, but of being considered for promotion. The petitioner himself annexes the Career Profile and Promotion Norms for Laboratory and Scientific Staff as Annexure 'A' at page 23 of the paper book. For promotion or for advancement to higher grade, it is necessary that he should fulfill the criteria or norms of minimum number of years' experience in the grade. The assessment grading to be considered is the one given by the Promotion Committee. The notes below this document would demonstrate as to how the up-gradation or promotion is performance based. The performance has to be assessed on the basis of the confidential records/reports. Further, there has to be an interview by the Promotion Committee. The minimal requirement for advancement is set out in notes (ii), (iii) and (iv), which read as under:-

“(ii) Staff whose work performance has been assessed to be outstanding based on Confidential Reports must be interviewed by the Promotion Committee to confirm the outstanding grading before recommending promotion.

(iii) Review by Promotion Committee. Promotion may or may not be recommended by the Committee based on their assessment of the work performance and future prospects.

(iv) Engineers involved in research and/or developmental activities may be considered for designation Scientific Officer.”

22. Hence, it is futile to urge that there are no proper norms or that the promotions are given contrary to these norms.

23. The petitioner himself represents and by his representations, copies of which are marked as Annexure 'B' collectively, that he was transferred for administrative exigency to Ooty in the State of Tamil Nadu. He has then enlisted his achievements and highlighted the same to request that he should be promoted, his leave salary should be released. He has not disputed that having been transferred to Ooty, it was expected of him to show or go past at least minimum results and which would be considered while awarding promotions. He makes no grievance though denied promotion for 13 years (see representation dated 3rd October, 2011 at page 48 of the paper book). The petitioner having put in 19 years of service and which he styles as meritorious, was denied promotion, but by merely addressing representations, he could have achieved nothing. If

indeed the action was wrongful and illegal so also violative of the constitutional rights, he should have moved promptly. The petitioner is aware that he did not remain present on duty, but availed of leave from 30th May, 2005 to 29th June, 2005. He claims to have been under treatment and therefore, unable to report for duty on 30th May, 2005. Apart from his family problems, he highlights his mother's illness and to attend to her, he had to go to Bellari. Then, he makes a grievance of not being allotted accommodation and raises that issue in his letter dated 4th July, 2005. Then, on 8th August, 2005, he applies for payment of eligible transfer advance at his new headquarter at Ooty and once again requests for allotment of quarters (Linton Bungalow). Then, on 5th September, 2009, he requests once again for the promotion, but in this representation, copy of which is at page 72 of the paper book, he alleges bias and prejudice by the authorities. He goes on making representations, but he is unable to obtain any relief. Yet, he does not approach a court of law. On 11th February, 2010, a detailed reply is given to him by the National Centre for Radio Astrophysics, TIFR (page 87 of the paper book), in which, he was clearly informed that leave is not a matter of right and is subject to sanction by the sanctioning authority. From 5th February, 2005 to 27th February, 2005 and thereafter from 7th March, 2005 to 29th June, 2005, the petitioner was absent from

duty without sanction of leave by the competent authority. He reported for duty on 29th June, 2005 at his own convenience and despite he being communicated by letters dated 24th February, 2005 and 31st May, 2005 to report for duty forthwith. How his absence from the duty would be treated was also informed in writing to him on 27th June, 2005 and 12th April, 2007. The petitioner was informed that this is treated as an act of indiscipline, but no disciplinary action was taken as a humanitarian gesture. Thus, this letter also informs him about why he was transferred, his entitlement in terms of facilities and accommodation. He was also informed that the flat in Linton Bungalow could not be allotted to him immediately and that was delayed because the petitioner had not vacated the quarter held at Narayangaon colony.

24. As far as promotion was concerned, he was clearly informed as under:-

“4) Promotion cannot be claimed as a matter of right and no comparison shall be made with any one else in this regard. It is the prerogative of the administration and the same is based on several factors viz., the performance with reference to the responsibilities entrusted, ability to lead and work in a team, track/service record, contribution during the residency period at the given level, administrative and management skills as demonstrated through the incumbent's various actions, among other capabilities. This is an issue examined on a case to case basis by a committee constituted for the purpose.”

25. At that time also, the petitioner threatened that he would approach a court of law, but did not. Thus, there is considerable merit in the contention of Mr. Naik that the petitioner has approached this court belatedly and there is no explanation for the enormous delay and laches.

26. Even otherwise and on merits, we find that there is no injustice. The petitioner was dealt with fairly and justly. Despite his objectionable conduct and which is treated as unbecoming of a technically qualified official working in TIFR, he was not visited with any penalty. He has been granted promotion and now, the petitioner claims that it should be with retrospective effect. We have perused the entire petition and the annexures thereto and we are unable to agree with Mr. Desai that the petitioner deserves to be promoted with retrospective effect. We cannot wipe out all the materials which the petitioner knows are adverse to him. If it is a performance based promotion policy and that has to be assessed by high level officials functioning as a Promotion Committee, then, we cannot deny to them the power that is vested in them by the promotion norms determined by the TIFR. Ultimately, malafides or allegations of bias and prejudice are easy to make, but difficult to prove. The petitioner does not give any particulars of such bias and prejudice as is now alleged in the pleadings. The vague and general plea in the representation or a

bald averment in the petition would not suffice. The necessary particulars and materials have to be placed before a constitutional court. We do not think that the petitioner was denied promotion and that act is contrary to any norms. The petitioner may claim that he was due for promotion to the Engineer-F grade during 2004-05 and thereafter to Engineer-G grade in 2012-13, but we do not think that his performance was such that he could have been awarded the promotion. The authorities were right in judging his conduct and performance and which we feel has been judged in a proper manner. The affidavit in reply indicates with sufficient clarity and details as to why the petitioner was considered for promotion at a later stage. It is in these circumstances that we are unable to agree with Mr. Desai that the petitioner has been promoted to the Engineer-F level/grade belatedly and that the said promotion should be reckoned with retrospective effect. The argument is, if that is reckoned or granted with effect from prior date and particularly, 2005-06, then, the petitioner automatically goes and advances further to grade/level 'G'. We do not think that we should accept such an argument from an officer like the petitioner, particularly bearing in mind his conduct and performance, which has been judged impartially and fairly. For these reasons, we do not find any merit in the complaint made by the petitioner.

27. The reliance on a judgment of the Hon'ble Supreme Court, which holds that whether an entry in the confidential report is adverse or not depends upon its actual impact on employees career and not on its terminology, has no application to this case. That principle is well settled. Even an entry "good" can be adverse in the context of eligibility for promotion. However, this is not a case where the adverse entries have not been communicated or that the effect thereof was of such serious nature as is highlighted in the judgment of the Hon'ble Supreme Court in the case of *Dev Dutt vs. Union of India*¹. The performance has to be outstanding by the promotion norms prevailing in the services of the first respondent before us. The petitioner could not achieve that benchmark. All the more because of his conduct and for which he has to blame himself. The other judgment following *Dev Dutt* (supra) in the case of *Sukhdev Singh vs. Union of India and Ors.*² also reiterates the same principle and we do not think that any uncommunicated adverse remark has been taken into consideration in this case. The petitioner was aware of the adverse material throughout. He represented against it. He also highlighted the alleged injustice. The first respondent found no merit in his allegations and maintained that the promotion would be granted to him in

¹ (2008) 8 SCC 725

² (2013) 9 SCC 573

accordance with the norms. After the petitioner's conduct improved and his services were found to be blemish-less, the first respondent promoted him. A promotion granted belatedly is not necessarily illegal and cannot be assumed to be such. More so, on some casual and vague allegations of discrimination and injustice, made by the petitioner. Moreover, that exercise, which was carried out way back and resulting in the alleged injustice and serious prejudice was never questioned by the petitioner till filing of this petition. Now that the promotion has been awarded and the petitioner is extended all the benefits, we do not think that he has any cause for complaint. Thus, reliance on these two judgments is entirely misplaced.

28. As a result of the above discussion, the writ petition fails and it is dismissed, but without any order as to costs. In the light of the dismissal of the writ petition, the civil application does not survive and stands disposed of as such.

(SMT. BHARATI H. DANGRE, J.)

(S.C.DHARMADHIKARI, J.)