

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2609 OF 2016

Union of India

.....Petitioner

V/s.

V.K. Telang and Ors.

....Respondents

Mr. Vinod Joshi with Ms. J.N. Pandhi, Advocate for the
petitioner.

Mr. Vikas K. Telang, respondent present in person.

CORAM :- SMT. V.K. TAHILRAMANI, J.

SANDEEP K. SHINDE, J.

DATE :- 27TH JUNE, 2017.

ORAL JUDGMENT (PER : SANDEEP K. SHINDE, J) :

1). Rule. By consent of the parties, Rule is made
returnable forthwith and the matter is heard finally.

2). Union of India has preferred this petition under Articles 226 and 227 of the Constitution of India against the order dated 30th October, 2015 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai in O.A. No. 649 of 2011 whereby the following directions were issued :-

“(i)the applicant's prayer for promotion to the post of Scientific Officer-F with effect from 1.8.2003 after ignoring the gradings in the ACR in the year 1998-99 and 2000-01 and pass appropriate order within eight weeks from the date of receipt of a copy of this order.

(ii)On the prayer of the Applicant for promotion to Scientific Officer G with effect from 1.8.2008, the respondents are directed to communicate a copy of ACRs/APARs to the Applicant for all the relevant years preceding 2009 and on receipt of his response, reassess and re-evaluate his ACRs/APARs as per rules. The Applicant is also directed to submit to the respondents a detailed representation regarding his non-promotion to the post of Scientific Officer-G in the year 2009 covering the grounds taken in the O.A. The respondents are directed to constitute a Committee to consider his Representation along with the allegations and counter-allegation contained in the O.A. and give its recommendations. After this exercise is completed the respondents are directed to put up the case of the Applicant before the DPC for consideration of his case for promotion to the post of Scientific Officer G with effect from 1.3.2008

as per the extant rules and procedures taking into account the decision on ACRs/APARs and recommendation of the above mentioned Committee. The whole exercise should be completed within a period of 16 weeks from the date of receipt of a copy of this order.”

3). The subject OA was preferred by the respondent herein who was appointed as a Scientific Officer (SO)/C in Bhaba Atomic Research Centre (“BARC” for short). He was promoted as SO/D on 1st August, 1994 and SO/E on 1st August, 1998. In 1999, he was given A3 grade, whereas, he has received A1 grade from 1992 to 1998. In 2000, he got A1 grade in his Annual Confidential Reports (ACR). It is his case that, he was not communicated adverse remarks for the year 1999. He had completed residency period of five years in the SO/E grade as on 1st August, 2003 and he expected that, he would be promoted as SO/F but promoted to the grade of SO/F only on 1st August, 2004 i.e. after a delay of one year. It is the applicant's case that from the year 2004-05 till 2008-09, he got grades of A2 in his ACR due to prejudice action of Mr. B.S.V.G. Sharma, who was impleaded as

respondent no.4. It is his further case that, though he got promotion to the post of SO/F and completed the period of residency of five years, he expected that, he would be promoted on 1st August, 2009 to the post of SO/G. He would claim that, his promotion to SO/G was denied due to improper gradings in his ACR by respondents no.3 and 4 who gave A2 grades which are below the benchmark remark of A1 required for the promotion to the post of SO/G. It is his further case, he was denied promotion to the post of SO/G on 1st August, 2009 based on un-communicated adverse entries/grading below the benchmark grading, is unjust, unfair, improper, unreasonable and illegal. He therefore submitted a representation to his employer on 29th March, 2010 making grievance about the grading given to him. It is his case that, on 18th May, 2011 he was interviewed separately but was informed that he has been found unfit for promotion to the grade of SO/G.

. In the circumstances, he approached the Tribunal and sought the following reliefs :-

“(i)to call for records and proceedings relating to the relating to the promotion to the post of SO-E to SO/F and after examining the legality and propriety thereof, direct the respondents to review the case of the applicant and promote him to SO-F w.e.f. 1st August, 2003 with all consequential benefits,

(ii)to call for records and proceedings relating to promotion of applicant to the post of SO-G and after examining the legality and propriety thereof, direct the respondents to promote him to the post of SO-G w.e.f. 1st August, 2009 and for such other consequential reliefs.”

4). The respondents countered the claim by filing reply on 13th June, 2012 and contended viz; (i)the applicant was promoted to SO/F w.e.f. 1st August, 2013 and therefore his claim before the Tribunal made in the year 2001 was belated and suffers from delay and latches., (ii)BARC follows the Merit Promotion Scheme (MPS) on the basis of merit as determined by their working over number of years.

5). The screening of the candidate is done by the Trombay Council consisting of Director, BARC as Chairman and Group of Directors, BARC as Members. Besides,

ACRs/APARs they also considered other aspects like Scientific and Technological programmes, Leadership qualities etc. The applicant was interviewed by the eminent and distinguished scientists who had met on 18th May, 2011 but found the applicant was not suitable for the promotion.

6). That unless the applicant clears the interview, he cannot be considered for promotion to SO/G.

7). Besides, they also denied, there was any bias on the part of respondents no.3 and 4 against the applicant and grading given by them from the year 2004-05 to 2008-09 were out of any prejudice. In short, the respondents contended, the applicant could not get promotion to SO/G in 2011 as the Selection Committee did not consider his work and performance justifying his elevation.

8). The issue before the CAT was, whether denial of promotion to the applicant to the post of SO/F w.e.f. 1st

August, 2003 and SO/G w.e.f. 1st August, 2008 was legally valid and sustainable.

9). The applicant in his O.A. alleged that, respondents no.2, 3 and 4 conspired against him to spoil his career by denying the promotion when he deserved it. It was his contention that, at different periods of time, remarks in his ACR/APARs were manipulated to ensure that he is given below benchmark grading so that his promotion can be delayed. These allegations were denied by respondents no.2, 3 and 4.

. On this aspect, the Learned Member CAT, in para-30 of its judgment correctly observed that, this aspect of allegations and counter allegations cannot be examined by the Tribunal and such allegations of personal bias and inter-personal conflicts may be examined by a Committee and therefore rightly confined itself to the questions of law and to examine the prayers of the applicant within the ambit of rules laid down by the judicial pronouncements in the matter

of ACR/APAR. The CAT has referred to instructions issued by the Department of Personnel and Training (DOPT) from time to time and rightly found that the system of APAR was introduced in the Government of India from 2007-08 wherein it is mandatory to show the APAR to the persons whose performance is evaluated. It appears that, on 13th April, 2010 Office Memorandum was issued by the DOPT wherein it is mentioned that, prior to reporting period 2008-09, only adverse remarks in the ACRs had to be communicated to the concerned officer for representation. The department, however, now decided, if any employee is to be considered for promotion in future DPC and his ACRs prior to the period of 2008-09 which would be reckonable for assessment of his fitness in such future DPCs contained a final grading which is below the benchmark for his next promotion. When such ACRs before being placed before the DPC for consideration, the concerned employee will be given a copy of relevant ACR for his representation.

10). In the case in hand, the applicant was given "Outstanding" Grade continuously from 1992-93 to 1997-98 and again in 1999-00. However, in the year 1998-99 damaging remarks were passed by the Reporting Officer which were adverse. Admittedly, these remarks were not communicated to the applicant but he would know this when he got a copy through RTI. It is not seriously disputed that, in BARC, Scientists are given promotion on time only if they have got A1 grading for all the years which are taken into account by the DPC for promotion. Be that as it may, such grading would weigh the decision of the DPC substantially. It is not in dispute that, A1 is the benchmark grading adopted in the BARC for promotion, besides other factors. That being so, it was obligatory on the part of the respondents to communicate adverse entries for the year 1998-99 and below the benchmark gradings in 2000-01, before denying him promotion to the Grade of SO/F in the year 2003.

11). That, in the circumstances, the Tribunal after

going through the records has correctly recorded a finding that grading in the year 1998-99 and 2000-01 have to be ignored and the respondents have to consider the case of the applicant for promotion to the Grade of SO/F by taking into account the grading in ACRs before 2002-03 and ignoring the ACRs of 1998-99 and 2000-01.

12). That after hearing the Learned Counsel for the petitioners and the respondents and after perusing the documents placed on record, in support of the petition by the Union of India, in our view, the petitioners, original respondents committed an error by not communicating the below benchmark grading to the applicant for the year 2004-05 to 2008-09 and as such in the process, the petitioners, original respondents violated the Office Memorandum dated 13th April, 2010 of the DOPD.

13). That after evaluating the pleadings and upon appreciating the law, directions were issued to the

respondents (present petitioners) as reproduced in paragraph-1 above.

14). We see no impropriety in the order passed by the CAT.

15). It appears that the petition was heard by the Division Bench at the first instance and by order dated 14th February, 2017 (Coram : R.M. Borde, J and A.S. Gadkari, J) directed the petitioner to file an affidavit explaining the compliance of the directions issued by the CAT contained in para-46(i) of the judgment and order dated 30th October, 2015.

16). The petitioner in response thereto filed an Affidavit of the Deputy Scientific Officer, BARC and submitted that the Committee found no basis for exceeding to any of the pleas made by the respondents in O.A. No. 640 of 2011 and representation dated 9th February, 2016. It is now

reported to this Court thus, “the Committee finds promotion to Grade SO/F in the year 2004 and SO-G in the year 2012 are in conformity with the norms of the Merit based Promotion Scheme.” The petitioner further reported that, the Committee did not find evidence to suggest that the interview for SO/F to SO/G is vitiated. The Committee, therefore, declined to nullify the decision of the DPC.

17). It appears that, the decision of the Committee approved by the Secretary (DAE) was served on the respondent, (original applicant) on 27th January, 2017.

18). That for the reasons stated hereinabove, in our view, the findings recorded by the CAT warrants no interference in writ jurisdiction. More so, the petitioner has also carried out the directions issued by the CAT and filed a report before this Court. We were informed across the bar that, the original applicant has filed a contempt proceedings against the petitioner for non-compliance of the directions of

the CAT in its true spirit. Be that as it may, if at all, the original applicant is not satisfied with the findings submitted by the Committee to this Court and to him on 27th January, 2017, he is at liberty to take appropriate steps in accordance with law as may be advised. That since, we have declined to interfere with the finding recorded by Learned CAT and since we find no merits in the contention raised by the petitioner. Petition is dismissed with no order as to costs. Rule is discharged accordingly.

(SANDEEP K. SHINDE, J)

(SMT. V.K. TAHILRAMANI, J)