

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.No.5927 of 2017
and
W.M.P.No.6334 of 2017

B.V.Balasubramanian ... Petitioner

-vs-

- 1.Union of India,
through Secretary to Government,
Department of Information & Technology, Electronics,
Niketan,
New Delhi-110 003.
- 2.Director General,
National Informatics Centre,
"A" Block, CGO Complex, Lodhi Road,
New Delhi-110 003.
- 3.Joint Director (Personnel),
National Informatics Centre,
New Delhi-110 003.
- 4.Central Administrative Tribunal
(Madras Bench),
High Court Buildings,
Chennai-600 104.

.. Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records in relation to the order passed in O.A.No.1228 of 2015 dated 19.01.2017 by the fourth respondent and quash the same and consequently allow the O.A.No. 1228 of 2015 filed by the petitioner as prayed for.

For Petitioner :: Mr.S.Karthikei Balan

For Respondents :: Mr.C.V.Ramachandra Murthy,
Central Govt.Standing Counsel
for R1 to R3

ORDER

(Order of the Court was made by
HULUVADI G.RAMESH, J.)

This writ petition has been filed to quash the order passed by the fourth respondent in O.A.No.1228 of 2015 dated 19.01.2017, wherein the claim of the petitioner that he was not considered in the review for promotion to the post of Tradesman 'F' in the year 2009, was rejected.

2.It is stated by the petitioner that he joined as Key Punch Operator in the National Informatics Centre, New Delhi in the year 1980 and later got transferred to Chennai on 18.07.1981 and worked in various capacities and retired as Tradesman 'F' on 30.06.2015. The petitioner states that he was promoted as Tradesman 'F' only in the year 2011, whereas he ought to have been promoted in the year 2009 itself. The petitioner filed an application in O.A.No.575 of 2011 before the fourth respondent-Tribunal and the Tribunal disposed of the said application on 18.04.2013 with a direction to the respondents 1 to 3 to pass appropriate orders on the representation made by the petitioner.

3. On the direction by the Tribunal, the Deputy Director of National Informatics Centre, New Delhi, passed an order on 25.06.2013 stating that the petitioner's name was not recommended by the Screening Committee for personal interview since he has secured only 84 marks whereas the Benchmark was 85 marks. Against the said order, the petitioner made an appeal to the second respondent and the same was rejected on 27.04.2015. Aggrieved by the same, the petitioner filed another application in O.A.No.1228 of 2015 on the file of the fourth respondent, which came to be dismissed on 19.01.2017. Challenging the said order, the present writ petition is filed.

4. The learned counsel for the petitioner submitted that the petitioner's name was not considered for review promotion in the year 2009 for no fault of him. The learned counsel states that the petitioner was promoted as Tradesman 'E' on 12.10.1992 and thereafter the review promotion took place only in the year 2009. According to him, the only criteria to be seen for promotion of the petitioner is his Annual Performance Appraisal Report in the preceding 5 years of the date of promotion. Referring to the Benchmark Table, the counsel submitted that till 2009, the Annual Performance Appraisal Report scores have

been rated only on the basis of A+, A, B+, B and C Grades and no numerical values were assigned and only from September 2009, the numerical grading has been introduced. Therefore, the benchmark for promotion till 2009 ought to have been done only on the basis of the grades given among A+, A, B+, B and C Grades and not otherwise, according to the learned counsel for the petitioner. It is also submitted that no opportunity was given to the petitioner as to why he was not qualified to be promoted as Tradesman 'F' in the year 2009, nor any communication has been sent to him for his non-selection. The only reason assigned by the Department is that the petitioner failed to secure 85 marks whereas he has only secured 84 marks, which according to the learned counsel for the petitioner, is unsustainable. Stating so, the learned counsel for the petitioner prayed for allowing this writ petition.

5.A counter affidavit has been filed by the Deputy Director (Admn.), National Informatics Centre, Government of India, Namakkal Kavignar Maligai, Fort St.George, Secretariat, Chennai, on behalf of the respondents 1 to 3, in which it is stated that the name of the petitioner for promotion to the Grade of Tradesman 'F' was considered by the duly constituted screening committee in the year 2009 itself and he was not given promotion only on account of the fact that he secured only 84% marks as against the prescribed 85% qualifying marks based on the grading in the Annual Performance Appraisal Report of the preceding five years. It is further stated that the grades assigned to the petitioner in the Annual Performance Appraisal Report for the period under consideration by the Screening Committee were converted to percentage as per the 10-point scale giving 10 marks for 'Outstanding', 8 marks for 'Very good', 6 marks for 'Good', 4 marks for 'Average' and zero for 'Poor', and since the petitioner could secure only 84% as against the minimum prescribed marks of 85%, his name was not screened for further consideration.

6.It is also stated in the counter affidavit that before commencement of selection process for a particular year, circulars were issued to all the eligible officials, their reporting officers, Heads of Departments, etc., indicating therein the scheme of promotion to be followed in the case of S&T officials (non-gazetted) below Group-A level. It is also stated that a copy of the circular issued by the National Informatics Centre in Circular No.2(5)/2009-Pers. dated 08.09.2009 intimating the decision of the competent authority to hold reviews in respect of Scientific / Technical Assistant and Tradesman who are completing the minimum residency period as on 1st October 2009 for promotion to next higher grade in terms of approved Flexible Complementing Scheme was duly conveyed to all the individuals including the petitioner.

7.Reiterating the submissions made in the counter affidavit filed on behalf of the respondents 1 to 3, the learned standing counsel appearing for the respondents 1 to 3 has submitted that six candidates including the petitioner, were considered by the screening committee and only two candidates who had secured 85% marks were promoted, and the remaining four persons were rejected and the petitioner is one of such four persons. Stating so, he prayed for dismissal of this writ petition.

8.Having heard the submissions made on either side and having gone through the materials available on record, we are of the considered view that whatever averred by the petitioner cannot be accepted straightaway in view of the overall performance being considered by the screening committee at the time of marking the grades. Since the petitioner fell short of 1%, ie., he obtained only 84% marks against the minimum requirement of 85% marks in the interview, he was not considered for selection.

9.A copy of the official memorandum of the Ministry of Information Technology Electronics, Niketan, New Delhi, in No.1 (1)/2000-Pers.III dated 06.08.2001, is enclosed in Page No.16 of the typed set of papers, in which it is seen in paragraph-4 that based on the clarification received from the Department of Personnel & Training, the criteria of marks for the first opportunity of promotion of S&T officers in all Group 'A' posts on the basis of the assessment of the Annual Confidential Reports and interview have been reduced from 90% to 85%. It is seen from paragraph-5 of the counter affidavit filed on behalf of the respondents 1 to 3 that a copy of the circular issued by the National Informatics Centre in Circular No.2(5)/2009-Pers.dated 08.09.2009 intimating the decision of the competent authority to hold reviews in respect of Scientific / Technical Assistant and Tradesman who are completing the minimum residency period as on 1st October 2009 for promotion to next higher grade in terms of approved Flexible Complementing Scheme was duly conveyed to all the individuals including the petitioner. Similar circulars were also issued to all the State Informatics Officers including that of the petitioner for their information and as such the petitioner was well aware of the percentage of marks, ie. 85% to be scored to be eligible for consideration for promotion. It is also stated that the reasons for not shortlisting the petitioner's name for interview by the screening committee for the year 2009 were intimated to him by the official memorandum dated 27.04.2015.

10.Further, it is the submission of the learned standing counsel for the respondents 1 to 3 that during the period from 2009 to 2011, the petitioner did not raise any grievance about the non-grant of promotion in the year 2009. This aspect has been rightly observed by the Central Administrative Tribunal

(Madras Bench) in its order under challenge in this writ petition. The Tribunal has also observed that there were no adverse remarks found in the Annual Performance Appraisal Reports for the relevant years and as such the contention of the petitioner that the gradings in the Annual Performance Appraisal Reports have not been communicated to him is not maintainable. It is also clear from the records that only two candidates who had secured 85% marks were promoted, and the remaining four of them including the petitioner were rejected since they had secured only 84% marks.

11. In view of the above stated reasons, we find no merit in this writ petition and accordingly the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS II)

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Sub Assistant Registrar

KM

1. The Secretary to Government,
Government of India,
Department of Information & Technology, Electronics,
Niketan,
New Delhi-110 003.
2. The Director General,
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"A" Block, CGO Complex, Lodhi Road,
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3. The Joint Director (Personnel),
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4. The Central Administrative Tribunal
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+1 cc to M/s.C.V.RamaChandra Murthy Advocate sr 63612
+1 cc to Mr.Karthikei Balan Advocate sr 64180

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