

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **W.P.(C) 7265/2017 & CM 30102/2017**

*Date of decision: 24<sup>th</sup> August, 2017*

MUKUL KUMAR MISRA ..... Petitioner  
Through: Mr.Ravinder Agarwal, Adv.

versus

UNION OF INDIA AND ANR. .... Respondents  
Through: Mr.Abhay Prakash Sahay, CGSC, UOI

**CORAM:**  
**HON'BLE MR. JUSTICE SANJIV KHANNA**  
**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**SANJIV KHANNA, J. (Oral)**

The petitioner, Mukul Kumar Misra, impugns orders dated 6<sup>th</sup> July, 2016 and 17<sup>th</sup> February, 2011.

2. The petitioner claims that he should be granted the benefit of non-functional up gradation w.e.f. 1<sup>st</sup> July, 2008 instead of 1<sup>st</sup> April, 2011. However, we find that the principal prayer is to expunge below bench mark grading as recorded by the Accepting Officer in the Annual Confidential Report (ACR for short) for the period 1<sup>st</sup> April, 2006 to 5<sup>th</sup> December, 2006.

3. The petitioner is working as Suptd. Engineer (Civil) in General Reserve Engineering Force, Border Road Organization.

4. Non-functional up gradation (NFU for short) was made applicable to the said service on 24<sup>th</sup> April, 2009 with retrospective effect from 2006. In order to be eligible for Non-Functional up gradation, one of the requirements is that the officer must have grading of 'very good' in 4 out of 5 ACRs.

5. The petitioner was communicated and informed about the below bench mark grading for ACR between 1<sup>st</sup> April, 2006 to 5<sup>th</sup> December, 2006 on 28<sup>th</sup> July, 2010. The petitioner made representation against this grading, by the Accepting Authority. The representation was rejected by the competent authority on 17<sup>th</sup> February, 2011. The grading was maintained.

6. The petitioner did not challenge or question the rejection of the representation vide order dated 17<sup>th</sup> February, 2011 in any proceedings.

7. The petitioner claims that he had made another representation dated 17<sup>th</sup> March, 2011 requesting for upgradation in the light of instructions vide O.M. dated 13<sup>th</sup> April, 2010 and for re-appraisal of his performance. It is a settled position that repeated representations would not confer continuing or extend the cause of action.

8. The question which arises for consideration is whether the petitioner should be allowed to question and challenge the grading recorded by the Accepting Officer in the ACRs for the period from 1<sup>st</sup> April, 2006 to 5<sup>th</sup> December, 2006, which was rejected vide

order dated 17<sup>th</sup> February, 2011, in this writ petition filed in August, 2017.

9. There is certainly a delay of more than 6 years in preferring the writ petition. Principle of delay and laches would come into play as it would be impossible for the respondents today to re-examine the issue after so many years. Apparently, the petitioner except for making one representation on 17<sup>th</sup> March, 2011, did not file any proceeding to challenge the order of the competent authority dated 17<sup>th</sup> February, 2011 rejecting his request for up gradation of the ACR for the period from 1<sup>st</sup> April, 2006 to 5<sup>th</sup> December, 2006.

10. The petitioner, however, submits that he is challenging the order dated 6<sup>th</sup> July, 2016 by which his request for review /fresh consideration of up gradation of his below bench mark grading in the ACR for the period from 1<sup>st</sup> April, 2006 to 5<sup>th</sup> December, 2006 was rejected. This letter disposes of the representation made by the petitioner vide letter dated 14<sup>th</sup> August, 2015, which was the third representation made by the petitioner. In this order dated 6<sup>th</sup> July, 2016, records that there was no provision for reconsideration for up gradation of the below bench mark grading given in the ACR by the Competent Authority, when Competent Authority had already taken the decision to reject the request for the up gradation. Accordingly, the representation was not entertained.

11. Thus, we do not think that the aforesaid order would give a fresh cause of action or right to the petitioner to invoke writ jurisdiction.

12. Learned counsel for the petitioner has referred to the judgment in *Union of India & Ors. vs. Tarsem Singh* (2008) 8 SCC 648 and submits that this is a case of continuing cause of action and no third party would be adversely effected if the petitioner is granted NFU. This is not a case of continuing cause of action. The cause of action first arose when below the bench mark grading was given to the petitioner in the ACR for the period from 1<sup>st</sup> April, 2006 to 5<sup>th</sup> December, 2006. The petitioner had thereafter, made a representation for upgradation which was rejected vide order dated 17<sup>th</sup> February, 2011. The aforesaid order concluded and brought to an end, the issue of ACR grading for the aforesaid period. The cause of action, therefore, finally accrued on 17<sup>th</sup> February, 2011 and is not a continuing cause of action.

13. The writ petition, therefore, has to be dismissed on the ground of delay and laches. Ordered accordingly, with no order as to costs.

**SANJIV KHANNA, J**

**NAVIN CHAWLA, J**

**AUGUST 24, 2017**  
**RN**