

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.7966 OF 2015

Dr. Akhilesh Kumar Mishra]
Scientist E, Residing at P/57, Type-J,]
R & D E Colony, Plandi Road, Dighi PO]
Pune, Maharashtra 411 015] .. Petitioner.

v/s.

1 Union of India, through its]
Secretary, Dept. of Personnel,]
& Training, having office at]
North Block, New Delhi 110 001.]
2 The Director,]
Recruitment and Assessment]
Center, Defence Research and]
Development Organization,]
Lucknow Road, Timarpur,]
Delhi 40054.]
3 The Director,]
Research & Development]
Establishment (Engineers)]
Alandi Road, Dighi,]
Pune 411 015.] .. Respondents.

Mr. Afroz A. Siddiqui, for the Petitioner.

Mr. Neel Helekar with Mr. D. A. Dube, for Respondent No.1.

**CORAM: A.S.OKA &
M.S.SANKLECHA, JJ.**
DATE : 2nd APRIL, 2019.

P.C:-

This Petition under Article 226 of the Constitution of India, challenges the order dated 16th January, 2015 passed by the Central Administrative Tribunal (the Tribunal). The impugned order dated 16th January, 2015 dismissed the Petitioner's original application, seeking promotion from the grade E-Scientist to grade F-Scientist w.e.f. 1st July, 2013 in Defense Research Development Organization, Pune (DRDO). Alternatively, the Petitioner sought to be re-assessed by the Assessment Board of DRDO for the purposes of Promotion from grade E-Scientist to grade F-Scientist in DRDO.

2 Briefly, the facts leading to this Petition are as under:-

- (a) On 31st July, 1999, the Petitioner joined the DRDO in the category of its grade C-Scientist. Thereafter, the Petitioner was promoted through selection process to grade D-Scientist and thereafter to grade E-Scientist. The Petitioner is working in the grade of E-Scientist from 1st July, 2008.
- (b) In the year 2013, the Petitioner was declared eligible for consideration by the Assessment Board of DRDO for promotion from the grade E-Scientist to the class of grade F-Scientist. Consequent thereto, on 17th May, 2013, the Assessment Board assessed the Petitioner's work and after interview came to the conclusion that he was not fit to be promoted to grade F-Scientist from the present position of grade E-Scientist.
- (c) The Petitioner sought re-assessment by the Assessment Board. By a letter dated 10th June, 2013, the DRDO informed the Petitioner that there is no provision for re-assessment under the DRDO Rules.

- (d) The Petitioner being aggrieved by the above order of the DRDO in not promoting him to grade F-Scientist, filed an application to the Tribunal on 21st June, 2013. The application sought promotion from grade E-Scientist to grade F-Scientist w.e.f. 1st July, 2013. Alternatively, the Petitioner sought re-assessment of his fitness for promotion.
- (e) In his application, the Petitioner stated that in view of his excellent academic record and the work done by him, the Assessment Board of the DRDO did not assess him properly. This he attributed to the fact that a member of the Assessment Board, in particular, Shri V.V. Parlikar, the laboratory representative was biased against the Petitioner. Therefore, Shri Parlikar in view of malice ensured that the Petitioner was not promoted to grade F-Scientist. It was also submitted that the procedure adopted by the Respondent to assess the candidates was not at all transparent and in any event, there is a provision for a review of promotion in the Service Rules by the Selection Committee. Thus, at the very least, the re-assessment by the Assessment Board, as prayed by him should be allowed.
- (f) The Tribunal in the impugned order dated 16th January, 2015 records the fact that for promotion from grade E-Scientist to grade F-Scientist, the minimum marks required was 80. However, the Petitioner had been assessed at 77 marks. Thus, leading the Assessment Board to conclude that the Petitioner was not yet ready/ fit for promotion. It also examined the Service Rules in detail and found that it did not provide for any re-assessment of the assessment done for promotion from grade E-Scientist to grade F-Scientist. Thus, holding that re-assessment of

the Petitioner could not be directed. So far as the allegation of malice or mala-fide on the part of the Assessment Board is concerned, the Tribunal notes the fact that the person against whom malice is being alleged, has not been made a party to the proceedings. Besides, an allegation of this nature has to be pleaded on firm foundation. Mere allegation of malafide cannot result in a finding of malafide. It must be established by evidence, which was lacking in the present facts. Therefore, on the aforesaid fact, the Tribunal dismissed the application of the Petitioner.

3 Mr. Siddiqui, the learned Counsel in support of the Petition submits as under:-

- (a) The Assessment Board had granted 77 marks to the Petitioner and mere granting of couple of marks would make him entitled to promotion from grade E-Scientist to grade F-Scientist;
- (b) The Assessment Board, in particular, Mr. Parlikar, who was laboratory representative, acted malafide against the Petitioner and ensured that he fails the selection process for promotion; and
- (c) In any view of the matter, this was a fit case where the Petitioner ought to have been re-assessed, as the Petitioner has failed to make grade by only a couple of marks.

4 Mr. Helekar, the learned Counsel appearing for the Respondent supports the impugned order.

5 We have considered the rival submissions., We note that the Assessment Board is constituted of expert Scientists who were in a

position to assess the relative merits of the candidates, seeking promotion from grade E to grade F Scientist. In such cases, the scope of judicial review is limited only to examine whether the Assessments done or the procedure adopted to do the Assessment are not contrary to any statutory or binding Rules. The only other case of judicial interference in such cases would be where malafide/ malice is established on the part of the Assessment Board i.e. its members. In this case, we do not find malifide has been established to warrant interference. Merely making of allegations will not satisfy the test of malice on the part of a member of the Assessment Board to come to the conclusion that the entire process of selection was vitiated. This, in addition to the fact that the Petitioner had not made Mr. Parlikar who allegedly acted malafide as a party to the proceedings. Thus, the allegation of malice in fact, fails also on the ground that the person against whom malice in fact is pleaded, is not a party to the present proceedings.

6 In any selection process, an element of subjectivity is inherent. Therefore, if the cut off marks is 80, then, merely because the Petitioner falls short by 1 or 2 marks, would not make selection process bad. If this would be a criteria, no selection/ assessment process can ever be completed as in every Assessment, there would be some candidates who would fall short of the qualifying marks by a mark or two. Thus, mere missing qualifying standard by a whisker would not by itself warrant granting grace marks by the Court or direct re-assessment, so as to promote the Petitioner.

7 So far as re-assessment is concerned, the impugned order of the Tribunal has in detailed examined the relevant Service Rules and

found that there is no provision for re-assessment of candidates in the selection process. Nothing has been shown to us to the contrary in the Service Rules which would lead to the conclusion of the Tribunal is bad in law.

8 In the above view, the view taken by the Tribunal, dismissing the Petitioner's application cannot be found fault with.

9 Therefore, the **Petition** is **dismissed**.

(M.S.SANKLECHA,J.)

(A.S.OKA,J.)