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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2019

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THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.No.1159 of 2017

N. Vijayaraghavan

... Party-in-person

Vs.

1.Union of India rep by Chairman,
Atomic Energy Commissioner/under
Secretary to Government of India,
Department of Atomic Energy,
Anushkathi Bhavan, CSM Marg, Mumbai-400 001.

2.The Director,
Indira Gandhi Centre for Atomic Research,
Kalpakkam Post,Kalpakkam - 603 102.

3.The Registrar,
Central Administrative Tribunal,
Madras Bench, High Court Campus,
Chennai - 600 104.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent relating to the order No.31/1/2012/IGCAR/R&DI/67, dated 11.01.2013 of the 3rd respondent Tribunal relating to the order in O.A.No.390 of 2013 dated 02.05.2014 and of the 2nd respondent relating to the order IGCAR/OA 390/Admn (O&M)/2013/284, dated 15.10.2014 and quash all those orders and consequently, direct the 1st and 2nd respondents to pay the arrears and retirement benefits accruing out of the promotions to the grades of SO(SC); SO(SD), SO(E), SO (F), SO(G) and SO(H) and etc., from the years 1984, 1987, 1992, 1997, 2002 and 2007, etc., or earlier on par with the petitioner's juniors before a date to be specified.

For Petitioner : Mr.N. Vijayaraghavan
Party-in-person

For Respondents : R3-Tribunal
Mr.K.S. Jeyaganashan
CGC for R1 and R2

ORDER

(Order of the Court was made by P.T. ASHA J.,)

The unsuccessful applicant before the Central Administrative Tribunal, Madras Bench, Chennai, is the appellant before this Court.



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2.The Writ Petition has been filed for the following relief:

"To issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent relating to the order No.31/1/2012/IGCAR/R&DI/67, dated 11.01.2013 of the 3rd respondent Tribunal relating to the order in O.A.No.390 of 2013 dated 02.05.2014 and the 2nd respondent relating to the order IGCAR/OA 390/Admn (O&M)/2013/284, dated 15.10.2014 and quash all those orders and consequently, direct the 1st and 2nd respondents to pay the arrears and retirement benefits accruing out of the promotions to the grades of SO(SC); SO(SD), SO(E), SO(F), SO(G) and SO(H) and etc., from the years 1984, 1987, 1992, 1997, 2002 and 2007, etc., or earlier on par with the petitioner's juniors before a date to be specified."

3.The facts which has led to the filing of the writ petition are as follows:

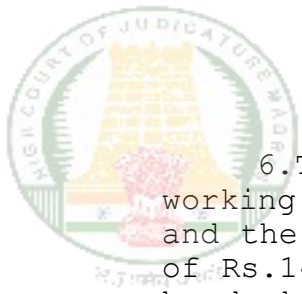
The writ petitioner had joined the services of Indira Gandhi Centre for Atomic Research (IGCAR) on 21.01.1978 as Tradesman-B. He had passed the A.M.I.E.(Associate Member of the Institution of Engineers) qualification in 1983. Thereafter, he was promoted as Scientific Officer (SB) on 01.02.1985.

4.The writ petitioner would contend that he has been rendering his best service to IGCAR. The writ petitioner would also contend that he has not been given promotion as per the norms prescribed by the Government of India vide communication dated 22.11.1991. As per the contention of the writ petitioner, if the respondents have followed the correct norms he would be entitled to promotions as detailed below:

1984 November	SO/SC
1987	SO/SD
1992	SO/E
1997	SO/F
2002	SO/G
2007	SO/H
2014	Retirement

5.The actual promotions that was given to the writ petitioner as per the arbitrary norms and illegal ACRs are as follows:

1985 February	SO/SB
1988	SO/SC
1993	SO/SD
1998	SO/E
2009	SO/F
2014	Retirement



6.The petitioner would submit that the juniors, who were working under him, have been given promotions as per the norms and the pay difference between his juniors and himself was a sum of Rs.14,000/- per month. The petitioner would also submit that he had rendered blemishless service of 35 years and despite this, his service has not been recognised. He would submit that he has made several representations to the respondents and ultimately, by communication dated 11.01.2013, the 1st respondent had given a reply that no injustice had been caused to the petitioner and that his promotion has been given as and when he became entitled to it based upon his performance.

7.The writ petitioner had challenged the communication dated 11.01.2013 by filing Original Application before the Central Administrative Tribunal, Madras Branch, in O.A.No.390 of 2013.

8.The 2nd respondent for self and on behalf of others had filed a reply statement in the said Original Application, wherein it was contended that at the time of joining the services, the writ petitioner was only having an PUC qualification and he was appointed to the post of Tradesman-B on 21.01.1978. Thereafter, on 01.11.1981, he was promoted as Tradesman-C. In the year 1983, the writ petitioner had acquired A.M.I.E., qualification and on 01.02.1985, he was promoted as SO/SB. Though his case was recommended for promotions to the Grade of SO/SC on 01.02.1997, no such promotion was given, since his performance in the interview was poor. Thereafter, on 01.02.1988, he was promoted to SO/SC.

9.Considering the Confidential Report grades for the period 1988-1989 to 1992-1993, the writ petitioner was considered for promotion only after the MEP (Minimum Eligibility Period) of 5 years, which was the prevailing norms and he was promoted to SO/SD on 01.02.1993. Thereafter, he was promoted as SO/SE with effect from 01.02.1998. Subsequently, the MEP was considered for 7 years i.e., from 1998-1999 to 2004-2005. The writ petitioner was recommended for promotion to SO/F with effect from 01.08.2005. However, once again his promotion was deferred since his performance was not up to the mark. In the year 2006, he was not considered as he was continuously on leave for a period of 165 days. On 17.07.2007, the interview for promotion to SO/F was fixed. However, the petitioner was away at U.S.A. for over 274 days and therefore, he was not considered. Ultimately, on 01.07.2009, the petitioner was promoted as SO/F.

10.The respondents would contend that in all, the petitioner had taken a leave of 975 days. The respondents would also contend that the petitioner's allegation that his ACR (Annual Confidential Report) was not produced and were withheld, is without any basis. Prior to the period 2010-2011, the ACRs were never communicated to the employees and only if there was any adverse remark, communication would be made to the employees. It is only after 2010-2011 that the ACR was communicated to the employees. The respondents would submit that there has been no discrimination insofar as the petitioner was concerned.



11.The Tribunal, after considering the arguments and verification of the records, ultimately passed the following order:

"If the ACR gradings have not been communicated till date, the respondents should do so immediately enabling the applicant to file his representation against the remarks in the ACR. If as a consequence to the representation(s) to be given by the applicant against the entries in the ACT(s) remarks, there is an improvement in the grading/ assessment, the case of the applicant ought to be reviewed on the basis of the MPS being followed by the Department Uniformly for considering promotion of all Scientific/ Technical personnel. There is a possibility that where the Reporting, Reviewing and Accepting Authorities (as applicable) may have all demitted office on superannuation, it may not be possible to obtain the remarks of any of the Authorities for deciding the representation (to be given by the Applicant) and therefore, it may not be possible to review the grading in the ACR for the relevant period. In such a situation, the benefit cannot be given to the applicant on the hypothetical basis that had the ACR gradings been communicated earlier, the gradings might have been revised to the benefit of the applicant, as he has chosen to agitate the matter after several years."

12.Ultimately, the Tribunal had held that in the event the Writ petitioner was entitled to an improvement of grading after the perusal of the ACR Gradings, he could give a representation and the respondents should consider the case on the basis of the MPS (Merit Promotion Scheme) followed by the Department uniformly for considering the promotions to all scientific technical personnel. Further, it was also made clear that in case the Officers, who had earlier done the Reporting, Reviewing and Accepting superannuated and it was not possible to review the grades, the writ petitioner was not entitled to the benefits. The Tribunal had also observed that the writ petitioner had moved the Tribunal highly belatedly. The Tribunal had made it clear that the long absence cannot be ignored and it would definitely have a bearing on the assessment of the employee.

13.After the order was passed by the Tribunal, the ACR gradings were given to the writ petitioner vide communication dated 27.06.2014 and he was also informed that he cannot seek promotion on par with others with retrospective effect.

14.The petitioner had submitted a detailed explanation dated 21.07.2014 to the said communication dated 27.06.2014. In the communication dated 21.07.2014, the writ petitioner had refuted the contentions made by the respondents and had also submitted that the denial of promotions to him based on non communication ACR is illegal. He further submitted that he was not put on



advance notice that the promotion panel was due to sit on 17.07.2007 and had he known it he would not have proceeded on leave. On the contrary, it was the respondents who though being very much aware about the sitting of the promotion panel on 17.07.2007 had sanctioned him leave. He therefore prayed that he has to be granted promotions retrospectively with all back wages. Thereafter, by letter dated 15.10.2014, the 3rd respondent had turned down the request of the writ petitioner. The petitioner has thereafter moved the present writ petition.

15.It is seen that the writ petitioner even thereafter addressed a representation to the 1st respondent and only in the year 2017 has moved the present writ petition challenging the original letter dated 11.01.2013, Order in O.A.No.390 of 2013 and the 2nd respondent's letter dated 15.10.2014.

16.Mr.N.Vijayaraghavan, who appeared as Party-in-person would contend that despite having an ACR which would state that his performance was very good, the respondents have not deemed it fit to grant him promotions as required and on the contrary, had proceeded to promote his juniors. He would submit that there has been a rampant case of discrimination. He would further argue that had the respondents followed the ACRs properly then he would have been promoted long back making him eligible to receive a higher pay.

17.Mr.K.S.Jeya Ganeshan, learned Central Government counsel appearing on behalf of the respondents would contend that the writ petitioner has taken leave for several days at a stretch and two of them at the time of promotion interview. He would further argue that the writ petitioner has been given promotions as per the norms and as and when he became entitled to it and therefore, the contentions to the contrary is absolutely false and he therefore sought for dismissal of the writ petition.

18.A perusal of the statement extracted by the Central Administrative Tribunal, Madras Bench, Chennai, in its order would give a bird's eye view of the promotions that were earned by the writ petitioner:

Grade / Post	Event	Date
Technician/B	Appointment	21.01.1978
Technician/C	Promotion	01.11.1981
Scientific Officer/SB	Promotion	01.02.1985
Scientific Officer/SC	Promotion	01.02.1988
Scientific Officer/SD	Promotion	01.02.1993
Scientific Officer/SE	Promotion	01.12.1998
Scientific Officer/SF	Promotion	01.07.2009
	Retirement	31.05.2014

<https://hcservices.ecourts.gov.in/hcservices/>

Therefore, the bone of contention appears to be for the period 1998-2000.



19. From the reply statement of the 2nd respondent, it is seen that in the year 1987, the petitioner's name could not be recommended as his performance in the interview was poor. Thereafter, he was promoted to SO/SC on 01.02.1988. There was a change in the norms wherein a Minimum Eligibility Period for 5 years was to be considered for promotion. Accordingly, on 01.02.1993, within the period of 5 years from 1988, the petitioner had been promoted to SO/SD. Thereafter, on 01.02.1998, he was promoted as SO/SC (within the MEP of 5 years). The MEP for the later period was 7 years and in 2005, the petitioner was recommended for promotion to SO/F, but however, the same was deferred on account of his poor performance. In 2006, he was once again not considered as he was continuously on leave for 165 days. On 17.07.2007, when the interview for the promotion post was held the Petitioner was outside the Country for over 274 days. Ultimately, the writ petitioner was promoted as SO/F on 01.07.2009. Therefore, it is clear that during the following periods, namely, 1987, 2005 and 2006, the promotion could not be granted on account of the poor performance and absence of the writ petitioner.

20. The contentions of the writ petitioner that the ACRs have not been communicated to him in time and therefore it worked to his detriment cannot be countenanced, for the reason that the policy of providing ACR to the employees was introduced only in the year 2010-2011 and prior to that only adverse remark in the ACR was communicated to the respective workmen.

21. Be that as it may, the writ petitioner has complied with the directions issued in O.A.No.390 of 2013 by the Central Administrative Tribunal, Madras Bench, by making a representation to the respondents on the basis of ACR that was forwarded to him by the respondents. This was once again in compliance of the order in O.A.No.390 of 2013. The representation was considered by the 2nd respondent and it was rejected by order dated 15.10.2014. Instead of moving the Central Administrative Tribunal, Madras Bench, Chennai, the writ petitioner has filed the instant Writ petition and that too after a period of three years from the date of the order.

22. In view of the voluminous documents before us to show the reasons for denying promotions to the writ petitioner, this Court does not find any merit in the writ petition and consequently, the writ petition stands dismissed. It is open to the writ petitioner to move the Central Administrative Tribunal, Madras Bench, Chennai, if he is so advised. No costs.

Sd/-
Assistant Registrar

//True Copy//



To

1.The Registrar,
Central Administrative Tribunal,
High Court Campus,
Chennai - 600 104.

2.The Chairman,
Union of India,
Atomic Energy Commissioner/under
Secretary to Government of India,
Department of Atomic Energy,
Anushkathi Bhavan,
CSM Marg,
Mumbai-400 001.

3.The Director,
Indira Gandhi Centre for Atomic Research,
Kalpakkam Post,
Kalpakkam - 603 102.

+1 cc to M/s.K.S.Jeyaganeshan,Advocate Sr.No. 62227

+1 cc to M/s.N.Vijayaraghavan,Advocate Sr.No. 62132

W.P.No.1159 of 2017

AKM/ 28.08.19/ 7P-6C /