

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 762 OF 2020

Ulhas Vaidya, Age. 44 years,
Occu.: Service, Residing at B1/704,
Purnodaya Park, Near Don Bosco
School, Adharwadi Jail Road,
Kalyan, District Thane, Pin - 421301 ... **Petitioner**

Versus

1. Union of India
Through the Department of
Atomic Energy
2. Director,
Tata Institute of Fundamental
Research, Having office at 1,
Homi Bhaba Road, Colaba,
Mumbai - 5.
3. The Chairperson,
Apex Committee on Colaba
Campus, Tata Institute of
Fundamental Research
4. The Chairperson,
Grievance Cell,
Tata Institute of Fundamental
Research ... **Respondents**

Ms. Jyoti Upadhye, Advocate for the Petitioner.

Mr. Niranjana Shimpi, Advocate for the Respondent
No.1/UOI.

Mr. Ashutosh R. Gole, Advocate for Respondent No.2,3 and
4.

**CORAM :S.V. GANGAPURWALA &
MADHAV J. JAMDAR, JJ.**

**RESERVED ON : AUGUST 25, 2022
PRONOUNCED ON : SEPTEMBER 23, 2022**

JUDGMENT : (Per : S.V.Gangapurwala,J)

1. The petitioner challenges the order wherein the claim of the petitioner for the post of Scientific Officer 'D' with effect from 1st July 2015 and consequential benefits are denied.

2. The learned Advocate for the petitioner submits that the petitioner was appointed as Scientific Assistant 'B' on the establishment of respondent No.2 on 26th October 1995. The petitioner has performed his duties sincerely and with utmost integrity. His Annual Performance Assessment Grades have always been 'Very Good.'. The petitioner at no point of time is issued with any kind of caution nor is reprimanded in his entire service career. The petitioner was promoted to Scientific Officer 'C' with effect from 1st August 2009. The next post of promotion in hierarchy is Scientific Officer 'D'. Upon rendering six years service as Scientific Officer 'C', the person with Assessment grading of 'Very Good' is entitled to be promoted as Scientific Officer 'D'. As per the norms of the promotion, petitioner becomes eligible for consideration for the next post on promotion after six years i.e. in July 2015. The petitioner was not informed about his candidature upto October, 2016. The petitioner made representation to respondent No.2 on 4th October 2016 raising the grievance for not being considered for promotion. The petitioner, thereafter, was called for

interview on 17th January 2017 and the petitioner was promoted to the post of Scientific Officer 'D' with effect from 1st January 2017. In fact, the petitioner ought to have been promoted on the said post with effect from 1st July 2015.

3. The learned Counsel further submits that the petitioner made representation to the Grievance Cell. The Grievance Cell considered all the aspects of the matter and observed that the grades of the petitioner are 'Very Good' in Annual Performance Assessment Report (hereinafter referred to as, '**APAR**'). The department did not process his case for promotion in July 2015 when he was qualified as per the norms. There is no adverse noting of the Department. The Grievance Cell Committee recommended promotion of the petitioner with effect from July 2015 so that he may get benefits of 7th CPC. The report of the Grievance Cell Committee was forwarded to respondent No.3. The petitioner's grievance was overlooked by the Chairperson, Apex Committee on Colaba Campus (hereinafter referred to as, '**ACCC**') on erroneous ground.

4. The learned Advocate for the petitioner further submits that it was erroneous on the part of the respondent to observe that for two years, the work output of the petitioner was not significant and the grades were relatively low. The reasoning therein is incorrect. In fact, as per the grading, the Department was duty bound to consider the candidature of the petitioner from July 2015. Only giving credit of one year would not be sufficient. The petitioner filed writ petition before this Court bearing No. 12378 of 2018. This Court directed the Director of Tata Institute of

Fundamental Research (hereinafter referred to as, 'TIFR') to decide the representation of petitioner dated 7th May 2018 within three months. According to learned Advocate, the right to be considered for promotion is a fundamental right. The respondent No.2 totally erred in not accepting the recommendations of Grievance Cell Committee. The order of the Grievance Cell Committee is well reasoned order. The respondent Nos.2 and 3 have not followed career profile while rejecting the recommendations of Grievance Cell Committee. Lapse on the part of respondent Nos.2 and 3 caused the petitioner loss of seniority and also deprived of further pay fixation as per 7th Pay Commission. As per the norms, average grade for promotion is considered as 7 – 8.9 and the grades accorded to the petitioner by the Promotion Committee i.e. 8 has been ignored in the assessment.

5. The learned Counsel for the petitioner relied on the order of the Division Bench of Delhi High Court in ***S. K. Murti v. Union of India & Ors.***¹ and submits that the respondents cannot take advantage of their own wrong. It is submitted that said judgment is upheld by the Apex Court.

6. The learned Advocate for the respondent Nos.2,3 and 4 submits that promotions in TIFR are based only on merits and not based on seniority and vacancy. There is a procedure for the promotion of Scientific Officer in School of Natural Science. The promotional criteria is adjudged with respect to the various factors which form part of Office Order dated October 18, 2018. After the Grievance Cell

1 Writ Petition © 14263 of 2004 Dtd. 5th October 2010.

Committee considered the letter sent by the petitioner, it reports to the Chairperson, ACCC for his approval. The Chairperson, ACCC considered the over all grades received by the petitioner and observed the downward trend. After considering all the aspects holistically and in totality, the Competent Authority observed that the petitioner not being considered for promotion in June 2015 did not warrant any interference. Again, as per the decision of the High Court dated May 20, 2019 in Writ Petition No. 12378 of 2018, the Director of Institute considered the case of the petitioner and passed a reasoned order on July 29, 2019. The Director had considered all the aspects of the matter and had accepted that, in July 2015 the petitioner was not considered. The Competent Authority also considered the relevant grades and found that due to downward trend in his grades that time his case was not considered in July 2015. However, in 2016 the Department awarded an overall grade of 8.0 and recommended his promotion initially with effect from 1st July 2016 and then the Core Committee recommended the promotion with effect from 1st January 2017. To remedy the grievance of the petitioner for alleged non-consideration, the Competent Authority fairly compensated the petitioner by granting one year credit for consideration of his case for next possible promotion. The order is well reasoned order.

7. The learned Counsel for the respondents submits that this Court may not exercise its powers of judicial review. The learned Advocate relies on the judgment of the Apex Court in the following cases :

- (i) *Union Public Service Commission v. Jawahar Santhkumar & Ors.*²;
- (ii) *Orissa Small Industries Corporation Ltd. & Anr. v. Narasingha Charan Mohanty & Ors.*³; and
- (iii) *U. V. Mahadkar v. Subhash Anand Chavan*⁴.

8. We have considered the submissions canvassed by the learned Counsel for the parties.

9. It is true that right of promotion is not fundamental right. However, it is also to be observed that the petitioner has right to be considered for promotion.

10. The Apex Court has observed that in the matter of selection and promotion to the higher post, if a Committee of Expert is constituted, then normally, the Court would not interfere in such decision unless mala fides are attributed or allegations of arbitrariness are proved. Reference can be had to the judgment of Apex Court in *U. V. Mahadkar* (supra).

11. In case of *Orissa Small Industries Corporation Ltd.* (supra), the Apex Court observed that the Court is not entitled to assess the respective merits of the candidates for adjudging the suitability for being promoted and the only right of the employee is a right of consideration.

12. In a case of *Union Public Service Commission* (supra), the Apex Court further observed that the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules.

2 2020 (18) SCC 356.

3 (1999) 1 SCC 465.

4 (2016 1 SCC 536.

13. In the present case, the petitioner deserved to be considered for promotion to the post of Scientific Officer 'D' in the year 2015. He was not considered. The Grievance Cell Committee recommended that petitioner be promoted with effect from July 2015. However, the Competent Authority disagreed with the said view and the reasons are also accorded by the Competent Authority.

14. The Committee has passed a detailed order stating as to how the petitioner could not have been promoted in the year 2015. In paragraph 9 of the affidavit-in-reply, the procedure is given for considering the case of promotion. The same reads thus :

9. I say that at the relevant time (2015 to 2017), the promotion cases of the Scientific Officers in School of Natural Sciences were broadly processed in the following manner :-

- (i) The Faculty member under whom the Scientific Officer is working, who is also called the Principal Investigator (PI) brings up the case for promotion to the Department if the PI finds the case is due for promotion.
- (ii) The Department discusses the case and forwards its recommendation to Dean, Natural Sciences Faculty (NSF, the Faculty of the School of Natural Sciences) if they find the case suitable for promotion.
- (iii) A core committee constituted by Dean NSF evaluates the case.
- (iv) Successful cases are further evaluated by the NSF.
- (v) If NSF approves, Dean NSF forwards their recommendation to the Director to issue the promotion letter."

15. It has been observed by the Competent Authority that even if the petitioner would have been considered for promotion in the year 2015, he could not have been promoted due to downward trend in his grades. The

promotion may or may not be recommended based on the assessment of the work performance and future prospects. It has been observed by the Competent Authority after going through the decision of the Grievance Cell Committee that the work output for the year 2013-14 and 2014-15 of the petitioner has not been significant compared to previous year performance and the grades were also relatively low although they were numerically in the 'Very Good' bin. In the departmental minutes there are statements to the effect as to why the case was not forwarded earlier in the year 2015. In July 2015, the case of the petitioner was not considered due to very low work output during the period after departure of Prof. Grover and beginning of Mr. Vaidyas Association with Prof. Thamizhavel from January 2016. This fact was not given more weightage by the Grievance Cell Committee. After his association with Prof. Thamizhavel, a positive slope in the work performance of Mr. Vaidya was noted by Prof. Thamizhavel and it is this positive attribute after January 2016 that enabled the Committee to give him promotion with effect from 1st January 2017. In view of that, it has been held by the Competent Authority that the petitioner could not have been eligible for promotion in July 2015. The respondent, it appears that, have given a special credit of one year for future promotion to the petitioner.

16. In light of the above, it would not be possible for us to sit as an Appellate Authority over the Competent Authority's decision in exercise of the writ jurisdiction under Article 226 of the Constitution of India.

17. In view of the above, no interference is called for.

18. The writ petition, as such, is disposed of. No costs.

(MADHAV J. JAMDAR, J.)

(S.V. GANGAPURWALA, J.)

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