

(10)

Central Administrative Tribunal
Principal Bench

O.A.No.2948/2002

Hon'ble Shri V.K. Mahtola, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

New Delhi, this the 10th day of September, 2003

Dr. Lalita Chugh
d/o G.C.Gulati
r/o G-32 CSIR Scientists Apartments
Maharani Bagh
New Delhi. ... Applicant

(By Advocate: Sh. Pradeep Kumar)

Vs.

1. Union of India through
The Secretary
Department of Science and Industrial
Research
Ministry of Science and Technology
Kutub Institutional Area
New Mehrauli Road
New Delhi.
2. The Director General
Council of Scientific and Industrial Research
Anusandhan Bhawan
Rafi Marg
New Delhi - 1.
3. The Director
Centre for Biochemical Technology
Mall Road
Delhi - 7. ... Respondents

(By Advocate: Sh. Satish Kumar, proxy of M/s
Sikri & Co.)

O R D E R (Oral)

By Shri Shanker Raju, Member (J):

Applicant assails his non-recommendation by the Assessment Committee held on 16.7.2001 for further promotion in the higher grade w.e.f. 27.11.1999. Reassessment has been sought with all consequential benefits.

2. Applicant, a Scientist 'C', is working in Centre for Biochemical Technology which comes under Council of Scientific & Industrial Research (hereinafter called as 'CSIR').

3. The revised Merit and Normal Assessment Scheme (hereafter called as MANAS) has come into force w.e.f. 1.4.1992. According to this Scheme, for assessment to Group II, III, IV and V(a) the criteria is on the basis of 100 marks and weightage to be awarded respectively for Annual Performance Appraisal Reports 50% marks, for peer review 30% marks and for interview 40% marks. The self assessment reports as per clause 6.2.1 and the work reports of the assessee without the remarks of the Reporting/Reviewing Officer (s) will also be placed before the Committee.

4. In so far as the APAR is concerned, the appraisal will not be confidential and would be communicated to the employee. Applicant, who had been directed to appear before the Assessment Committee on 16.7.2001, was communicated appraisal of self assessment report as per 5.2.1 of the MANAS on 12.7.2001, in which she had been given four weeks to file her written objections.

5. As per the regulations, it was incumbent upon the respondents to communicate critical self appraisal of self assessment of every year but the same was not followed and rather the appraisal was communicated of five years at one go before four days of the assessment.

6. Applicant responded to the communication of complete self appraisal by making a representation admittedly after the assessment by the Committee.

7. Applicant represented, bringing out the aforesaid illegality. By an Order dated 13.7.2001, it has been informed that applicant has not been recommended by the Committee. Another representation in respect to self appraisal has been rejected on 27.12.2001 holding that the grading would remain unchanged.

8. Learned counsel for applicant contends that as per the instructions in MANAS guidelines issued by the respondents, critical appraisal of review officer shall be communicated to the employee who may respond in writing within a period of four weeks after receipt of the remarks. The representation would be considered by the competent authority with communication of final decision.

9. Having regard to the above, it is stated that 37 marks which are meant for APAR out of which, as stated by the respondents, applicant could get 12. Had the representation being considered and the assessment was done after the expiry of the four weeks, applicant would have been able to secure 60 marks which was the Bench Mark for further promotion in assessment. This, according to the learned counsel, has deprived of an opportunity and is in violation of principle of natural justice. A reasonable opportunity has been denied as only two days have been allowed from communication of appraisal, till meeting of the Assessment Committee. It is bad in law on the face of it.

10. It is stated that taking resort to a letter written by the DG, CSIR on 25.8.2000, according to that in case of non-submission of her assessment report, the reports have to be written and reviewed by the concerned officers on the basis of their own knowledge about the work and conduct of the officer and it is necessary to communicate the APAR grading and dispose of the representation before the assessment, failing which the assessment conducted are replied to be quashed. The aforesaid guide-lines are supplanting MANAS and are binding on the respondents. It is, in this conspectus, stated that respondents have violated the norms for assessment, needs review.

11. On the other hand, proxy counsel for respondents contends that the applicant having participated in the selection, is estopped from challenging the same and as per the decision of the Apex Court.

12. It is further stated that applicant was asked to appear before the Assessment Committee on 20.6.2001. The detailed representation made against APAR grading was considered and rejected. However, it is stated that no intimation was available with the Director or to Interview Board as regards review of the APAR grading.

13. By referring to earlier communication of APAR grading, it is stated that it is due to late submission that the grading has been communicated of yester years on 12.7.2001. It is further stated that the Bench Mark for further promotion to the next

higher grade was 60, the applicant secured 57 marks and 19 marks in APAR. She has not been prejudiced in any manner as such in absence of bias on mala fide, violation of any procedural rules would not vitiate the selection proceedings and it is not open for this Court to sit as an appellate authority over the findings of Selection Committee.

14. We have carefully considered the rival contentions of the parties and perused the material on record. It is settled principle of law as held by the Apex Court in Raj Kumar v. Shakti Raj, 1997(9) SCC 527 that in a selection even on participation if there exists an illegality of the procedure, the selection process can be challenged.

15. In that event, it is open for the Court in a judicial review to examine the selection process.

16. The only instructions which governs the assessment is MANAS. As per Para 5.1.3 Annual Performance Appraisal Report, i.e., APARs assessment statement of work during the year. 75% weightage is to be given to APAR, and its appraisal is to be done by reporting and reviewing officer. The aforesaid APAR, as per the instructions in MANAS is to be communicated to an employee, who may respond in writing, the same would be considered by the competent authority, and the final decision would be communicated.

17. In furtherance of above, DG, CSIR vide its letter dated 25.8.2000 which has been brought to the notice of CAO/AO and others is concerned staff should have strict compliance as laid down and that it is necessary to communicate the APAR grading and dispose of the representation made within the prescribed time limit before the Assessment, failing which the assessments conducted are liable to be quashed.

18. In this view of the matter, the aforesaid decision an administrative instruction, supplants MANAS, and is in no manner contrary to assessment Scheme.

19. We find that whereas appraisal is to be communicated yearwise. Self appraisal has been submitted by the applicant in time as the charge report does not indicate the date of submission of the appraisal as the date has been shown to be missing. However, the fact remains once the self assessment report and appraisal has been communicated to the applicant on 12.7.2001, with a stipulation that the same be responded within four weeks without waiting for the aforesaid period and holding of assessment on 16.7.2001 is grossly in violation of guide-lines laid down by DG and in that event, the assessment is held to be illegal and is liable to be quashed.

20. In so far as the prejudice is concerned had the applicant been accorded an opportunity to prefer a representation the result would have certainly made some difference.

11. In so far as the Assessment Committee has held that neither Committee nor Director were apprised of such review cannot be countenanced as the DG instructions have been widely circulated and being a directive, it should have been in the knowledge of the concerned. Ignorance cannot be an excuse in law. As the Selection Committee i.e., Assessment Committee, has acted de hors the rules and instructions, the aforesaid assessment in respect of the applicant cannot be sustained in law.

12. In the result, DA is allowed. Assessment of the applicant as held on 16.7.2001 where she has been declared unfit by an order dated 18.7.2001 is quashed and set-aside. Respondents are directed to review the assessment of the applicant and in the event, she is found suitable be accorded promotion and all consequential benefits w.e.f. 27.11.1999 and in accordance with law, within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (A)

Copy

V.K. Majumdar
(V.K. Majumdar)
Member (A)