

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : INDORE

Original Application No.201/1066/2012

Indore, this Tuesday, the 17th day of March, 2020

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

A.K. Sarkar, S/o Late Shri N.N. Sarkar, aged 46 years, Occupation Service, Scientific Assistant (E) C.C. No. 614, M.A.A.S.D., FELL. in R.R.C.A.T, Indore, R/o-D-46/3, R.R.C.A.T. Colony, Indore – 452013 (MP)

-Applicant

(By Advocate – Smt. Seema Mishra)

V e r s u s

1. Union of India through Secretary to the Govt. of India, Department of Atomic Energy, Anushakti Bhawan, Mumbai – 400001.

2. Raja Ramanna Centre for Advanced Technology, Indore – 452013 (MP) through it Director.

3. Dr. P.D. Gupta, Director, R.R.C.A.T. Indore – 452013 (MP).

4. Shri J.K. Mittal, Former Head, Laser System Engineering Division (L.S.E.D.), R.R.C.A.T, R/o – 28, Parmanu Nagar, Near Rajendra Nagar, CAT- Rau Road, Indore – 452013 (MP).

5. Shri S.V. Nakhe, Scientific Officer/H, Laser System Engineering Section (L.S.E.S.), R.R.C.A.T, Indore – 452013 (MP).

6. Shri Piyush Saxena, Scientific Officer/G, Laser Electronics Support Division, R.R.C.A.T, Indore – 452013 (MP)

-Respondents

(By Advocate – Shri Kshitij Vyas)

(Date of reserving order : 10.12.2019)



ORDER

By Navin Tandon, AM.

The applicant is aggrieved by poor grading given to him in the Confidential Report (CR) for the period 01.02.2008 to 31.01.2009.

2. The applicant has made the following submissions:

2.1 He is a Mechanical Engineering Diploma holder and was initially appointed on the post of Scientific Assistant/B on 01.01.1991. He was promoted to the post of Scientific Assistant/C, Scientific Assistant/D and Scientific Assistant/E on 01.08.1994, 01.02.199 and 01.02.2006 respectively.

2.2 Respondent No.4 started harassing the applicant as he already had a grudge and malicious feeling on account of social belonging of the applicant to SC category. The harassment of the applicant started when he was called upon to supervise the workshop at LSED by respondent No.4 by issuing a notice dated 14.08.2007 (Annexure A-4).

2.3 The applicant prayed for his transfer out of LSED vide his emails dated 16.08.2007 (Annexure A-5) and 07.09.2007 (Annexure A-6). He was transferred to Copper Vapour Laser chain activity under respondent No.6.

2.4 On 06.02.2009 (Annexure A-8), he was issued a memo calling him to fill self appraisal form for recording the CR from 01.02.2008 to 31.01.2009,



which he promptly filled up and submitted to the respondents within stipulated time.

2.5 On 29.06.2009 (Annexure A-10), he received a memorandum from respondent No.4 about his below normal marking in the CR.

2.6 In the self appraisal form for the year 2008-09, he has indicated that he has given about 20% time in CVL Laser head maintenance and 40% each in Dye Laser circulation system under guidance of Shri Rajeev Choubey, SO/F, and fabrication of a vacuum chamber under Shri Prashant Khare, SO/F.

2.7 On receipt of the duly filled CR by the applicant, respondent No.4 asked the feedback from Shri Prashant Khare and Shri Rajeev Choubey vide their letter dated 11.06.2009. Shri Prashant Khare responded that the applicant worked from 01.11.2008 to 31.01.2009 and he spent approximately 30% of time during this period with him. Similarly, Shri Rajeev Choubey also responded that the applicant worked with him on part time basis during February 2008 to May 2008 and he had devoted about 15% to 25% (say 1 to 2 hours out of 8 hours daily with him). These correspondences have also been filed along with copy of the CRs (Annexure A-11).



2.8 In the desperate attempt to downgrade the applicant, respondent No.6 had granted lower grading to the applicant even in those attributes which cannot degrade with the passage of time such as theoretical abilities, experimental or practical abilities, technical judgment, professional knowledge etc., that too when the field of expertise of the respondent No.6 (Electronics Engineer) is quite different from that of the applicant, i.e. Mechanical.



2.9 It is worth mentioning that these are the same attributes that had allowed the applicant to earn either 'very good' or 'outstanding' grading in his CRs from the year 1991 to 2007 and after 2009.

2.10 Before recording below normal grading in his CR, he was never issued any warning either verbal or written by the respondents.

2.11 Being aggrieved by his below grading CR for the period 01.02.2008 to 31.01.2009, the applicant immediately submitted representation dated 10.07.2009 (Annexure A-13) to respondent No.4. However, under undue utmost coercion of spoiling the career exerted by the respondent No.4 and under a misrepresentation of reconsidering the grading awarded to the applicant by the respondent No.3, he was forced to withdraw his

representation by submitting another representation dated 21.07.2009 (Annexure A-14).

2.12 He approached the SC/ST cell of the respondent department. Since the grievance was not redressed therein, he approached the National Commission for Scheduled Castes.

2.13 The main grudge of the applicant is that his CR has been graded as below normal without any word of caution or advice. Further, he has been posted to a group under Electronics Engineers and his work done with Shri Prashant Khare and Shri Rajeev Choubey has not been appreciated.

3. He has sought for the following reliefs:

“8. RELIEFS SOUGHT :-

This Hon’ble Tribunal may graciously be pleased-

- (a) to call for the relevant records of the case from the respondents;
- (b) to quash the impugned Memorandum dated 29.6.2009 (Annexure A-10) issued by the Res. No.4 as well as to expunge the adverse remarks made by the Res. No.4 to 6 in the A.C.R. for the period 1.2.2008 to 31.1.2009 (Annexure A/11), by issuing any appropriate direction or order;
- (c) to command the respondents to consider the claim of the applicant for grant of special allowance @ 20% of basic pay i.e. pay band plus grade pay w.e.f. 1.9.2008 and to grant him the same by re-fixing his pay and by releasing the arrears thereof along with interest @ 12 % p.a., by issuing any appropriate direction or order;
- (d) to allow this petition with costs;
- (e) to pass such other order(s) as may be deemed appropriate in the facts and circumstances of the case, to grant relief to the Applicant.”



4. The respondents have filed their reply where the following submissions have been made:

4.1 The applicant's contention that he has excellent track record in the earlier years is contrary to the facts, He was last promoted in the Grade SA/E in the year 2006 after completion of 7 years. This period is 3 years more than the minimum eligibility period of 4 years.

4.2 The applicant in his CR had stated that he had devoted 80% of his time for carrying out work outside the parent division. However, as per the evaluation done by the concerned officials in those divisions, it is clear that he devoted only 15% of his time on those activities.

4.3 The applicant has got Performance Related Incentive Scheme (PRIS) benefit every year including the said period.

4.4 The applicant approached the National Commission for Scheduled Castes. After going through all the details, the National Commission communicated its decision to the applicant vide their letter dated 04.07.2012 stating that no more action is possible as the Commission does not deal with the grading of ACRs.



4.5 In Scientific/Technical projects, staff members from different disciplines are members of a given Division, who carryout work assigned by senior officers. These senior officers have rich experience of handling activities in multi disciplinary areas related to their projects. The area of laser system engineering pursued in the Laser Systems Engineering Division (LSED) involves various disciplines namely, Electronics/Electrical Engineering, Mechanical Engineering and Physics.



4.6 In the period earlier to 2008-09, the applicant was found unfit for promotion in interviews by the Selection Committees during 1998, 2003 and 2004.

4.7 After changing his Division on his own request, he preferred to work in Materials and Advanced Accelerator Sciences Division (MAASD), where he is being assessed and reviewed by officers of different disciplines.

4.8 The applicant submitted his filled CR for the period February, 2008 to January, 2009 on 03.06.2009 although he was communicated in writing on 06.02.2009 to submit the filled CR latest by 20.02.2009. Based on the report from Shri Rajeev Choubey and Prashant Khare, it was found that the total work contribution of the applicant for the full year turns out to be about 8 %

and 7 % respectively for each of them. Therefore, to write that he devoted 40% of time with each of them totaling to 80% is grossly exaggerated.

4.9 The grading of the applicant for the CR period February 2008 to January 2009 is assigned without any bias and prejudice. It is assigned purely on the work output, quality of work and various other attributes exhibited during the period by the applicant.

4.10 Written communications were given to the applicant on 08.08.2008 (Annexure R-8) and again on 31.10.2008 (Annexure R-9) to communicate that his work is lacking. Multiple reminders were also given to which the applicant did not pay any heed.

4.11 At the instant point of time, respondent No.3 (Dr. P.D. Gupta) was not in picture as he assumed the charge of Director, Raja Ramanna Centre for Advanced Technology (RRCAT) only on 01.08.2009.

4.12 The applicant represented about his below normal grading on 10.07.2009. Subsequently, he realised his shortcomings and withdrew his representation on 21.07.2009 (Annexure R-5). In this letter, he promised to work with sincerity in future.

5. The applicant has filed a 34 page rejoinder, wherein he has brought out several points which are not the subject matter of this Original



Application namely; non consideration of the applicant in the year 2003 and 2004 because he was from Schedule Caste community; ACR for the period 01.02.2007 to 31.01.2008, not posting him at an appropriate place; the respondents misleading the National Commission for Scheduled Castes etc. The matters which are relevant to this Original Application are as under:

5.1 He had submitted his appraisal form for the reporting period 01.02.2008 to 31.01.2009 well in time in the month of February 2009 itself. However, for some extraneous unknown reasons, the same was destroyed by respondent No. 4 and in the guise of the same, the applicant was forced to fill in the second set of CR forms which came to be filled by the applicant in the month of May, 2009. Further, the self appraisal form was submitted by the applicant on 20.05.2009. However, for some extraneous consideration, the applicant was directed by respondent No.6 to change the date to 03.06.2009.

5.2 Respondent No. 4 has written a letter on 21.05.2009 (Annexure A-31) wherein it has been stated that no employee in his Division in the grade below Scientific Officer 'C' and equivalent technical grade is rated less than "Average" in their performance grading. From this it is clear that all the ACRs for the period 01.02.2008 to 31.01.2009 were complete in all respects by 31.05.2019.



5.3 The CR for the period 01.02.2008 to 31.01.2009 was signed by Director, RRCAT on 23.06.2009. However, the Principal Private Secretary Shri B. Devadasan sent an email on 18.06.2009, wherein it is stated that name of the applicant may be added to the list of officers having been rated below average.

5.4 Respondent No. 6 is a Electrical Engineer. On account of improper place of posting, the applicant's efficiency was not properly utilised.

5.5 Different assessment sheets should have been initiated by Shri Rajeev Choubey and Shri Prashant Khare as per the procedure. However, this was not done. The letters written by respondent No. 4 to Shri Rajeev Choubey and Shri Prashant Khare and their replies were on the back of the applicant and the applicant was never given an opportunity to say a single word about the above letters.

5.6 He has been granted the benefit of PRIS only after filing of this Original Application.

5.7 Respondent No. 5 has written in his ACR on 16.06.2009 that the officer has been informed in writing of any marking below normal. However, the applicant was informed of below normal making vide letter dated 29.06.2009 (Annexure A-10).



5.8 Communication of adverse remarks by respondent No. 4 was beyond his jurisdiction. This should have been done by respondent No.5.

5.9 Respondent No. 4 had malice against the applicant.

5.10 The applicant had to file his representation against the CR of the year 2008-2009 to respondent No. 4 only who, in the first place, had spoiled the APAR. This is against the principle of natural justice.

5.11 Respondent No. 3 Dr. P.D. Gupta, Director RRCAT did the double deal with the applicant and provoked him to withdraw the representation by falsely promising him to upgrade the CR for the period of 01.02.2009 (sic 01.02.2008) to 31.01.2009 to “Out Standing (A1)”. The applicant withdrew his representation in a hope that his ACR will be upgraded even without representation as promised by respondent No.3. However, this was a false promise.

5.12 Respondent No. 3 Dr. P.D. Gupta was officiating Director of RRCAT from 2006. Therefore, for respondent to say that respondent No. 3 by name was not in picture at that time as he assumed charge of Director, RRCAT only on 01.08.2009, is not correct.

6. Heard the argument of learned counsel for both the parties and perused the pleadings available on record.



7. Learned counsel for the applicant averred that since the applicant had worked with Shri Prashant Khare and Shri Rajeev Choubey for a long period, the CR should have been initiated by these two persons also as per Note-3 of the Confidential Report (Annexure A-11), which reads as under:

“3. If there is more than one assessor, they should work independently and must not consult in any way. No reference should be made to previous report.”

7.1 She also argued that the communication of adverse CR, which was done by respondent No.4 in memorandum dated 29.06.2009 (Annexure A-10) should have been signed by Shri S.V. Nakhe (respondent No.5) and not by respondent No.4 as has been done.

7.2 She also highlighted that in the communication by respondent No.4 dated 21.05.2009 (Annexure A-31) it has been stated as under:

“It is certified that no employee in my Division/Section in the grade below Scientific Officer ‘C’ and equivalent technical grade is rated less than “Average” in their performance grading.”

7.3 Therefore, for applicant to be given a below average rating is contradictory.

7.4 The applicant had filed the representation on 10.07.2009 (Annexure A-13) but he was coerced to withdraw the same on 21.07.2019 (Annexure A-14).



7.5 She also highlighted that the applicant was on leave on 03.06.2009 (Annexure A-25 page 73), then how can he submit his self appraisal on 03.06.2009.

8. Learned counsel for the respondents submitted that the applicant himself has delayed submitting the self appraisal for 2009-10. He was directed to fill the same before 20.02.2009 but he filled up on 03.06.2009. Subsequently, by completing all the steps, the CR was accepted on 23.06.2009 and was communicated to him on 29.06.2009 (Annexure A-10).

8.1 He also highlighted that warning letters were issued to him on 08.08.2008 (Annexure R-8) and 31.10.2008 (Annexure R-9).

8.2 Learned counsel for the respondents also drew our attention to applicant's representation dated 10.07.2009 (Annexure A-13) in which he has not raised any point regarding his performance during the year under consideration and even that representation was subsequently withdrawn.

FINDINGS

9. The first issue raised is that since the applicant has only spent part of the time under respondent No.6 and bulk of the time has been spent with Shri Prashant Khare and Shri Rajeev Choubey, therefore, there should have been multiple assessors (three numbers) and they should not have consulted





to each other in any way. We find that the applicant in his self appraisal has given his broad division of time as 20% time in CVL Laser head maintenance (with respondent No.6) and Dye Laser circulation system with Shri Rajeev Choubey, SO/F as 40%, and fabrication of a vacuum chamber with Shri Prashant Khare, SO/F as 40%. When this fact came to the knowledge of respondent No.4, who is the Head of the Department of LSED, he asked the two persons namely; Shri Prashant Khare and Shri Rajeev Choubey to ascertain the period that the applicant has worked with them. Shri Rajeev Choubey, SO/F has very clearly indicated that the applicant worked with him on part time basis between February to May 2008 to the extent of 15 to 25% per day. Similarly, Shri Prashant Khare has also written that the applicant worked for 30% of his time from 1st November to 31st December.

10. The applicant had submitted a Brochure on Preparation & Maintenance of Annual Performance Assessment Report for Central Civil Services during argument stage, wherein it has been indicated that, “While normally there should be only one Report covering the year of Report, there can be situation in which it becomes necessary to write more than one Report during a year. There is no objection to two or more independent Reports being written during a year by different Reporting Officers, subject

to the condition that each Reporting Officer has at least three months experience on which he can base his Report on the Government servant reported upon. Where more than one Report is written in the course of a year, each Report indicate precisely the period covered by it.....”

10.1 In the instant case, it is very clear that the applicant has not worked full time for more than three months with either Shri Prashant Khare or Shri Rajeev Choubey as is clear from their own communication. We do not find any merit in the argument of learned counsel for the applicant that the assessment should have been done by Shri Prashant Khare and Shri Rajeev Choubey also.

11. Learned counsel for the applicant had raised the objection that since respondent No.5, Shri S.V. Nakhe as counter signing officer has signed on 16.06.2009 and against Para 9 he has stated as under:

“9. Has the officer been informed in writing of any marking below “Normal” with which you agree? If he/she has not been, please state why ?”

Yes.

11.1 Therefore, the communication of below normal CR on 29.06.2009 by respondent No.4 is vitiated.

11.2 Perusal of the Para 9 very clearly indicates that the officer reported upon has to be informed during the year under consideration to which Shri



S.V. Nakhe (respondent No.5) has replied as Yes. This is different than memorandum dated 29.06.2009 (Annexure A-10), wherein the applicant has been informed of his below normal CR after the whole process has been completed. Therefore, we do not find any merit in the contention of learned counsel for the applicant in this regard.



12. We are unable to give any credence to the argument of learned counsel for the applicant that the applicant had filled his performance appraisal within the month of February 2009 but his superior authorities forced him to submit another month which was done on 20.05.2009 and was again cut and counter signed as 03.06.2009. Nowhere in the CR has the applicant stated that this is a duplicate appraisal which he is giving. The date written as 20.05.2009 has also been cut and written as 03.06.2009 and has been counter signed by the applicant. If the applicant was on leave on that date, the onus was on the applicant that how he has written this date when he was on leave on that date.

13. The applicant in his representation dated 10.07.2009 (Annexure A-13) has mentioned as under:

“I am (A K Sarkar SA/E) basically Mechanical diploma holder. I joined in RRCAT in 1991 as SA/B. Since joining I have always been assigned to work with Mechanical Engineers. I always completed the assigned works up to their satisfaction. I had never faced any kind of below average grading earlier.

During this period (01/02/08 to 31/01/09), I was asked to work and report to an Electronics Engineer (Shri P Saxena SO/F). I tried my level best to perform my work under the guidance of Shri P Saxena. I also expressed my difficulties several times in front of you and Shri P Saxena. At the end I was given below average grading for this period without any proper reason. I can not accept this below average grading because my previous experience and performance was never counted below normal. I have always timely completed the work assigned to me by my immediate superior.

I request you to transfer me to any other group with any Mechanical engineer. Because a mechanical engineer can better judge my theoretical ability, experimental or practical ability, originality, technical judgment, professional knowledge, work quality, productivity, conscientiousness and I can give my better output to this center.”



13.1 Perusal of the above very clearly indicates that the applicant has only talked of extraneous matters and has not indicated anything regarding his own targets and his own accomplishment during the said period.

13.2 Further, on 21.07.2009 (Annexure A-14), he has submitted his representation as under:

“I wish to withdraw my representation dated 10th July 2009. I also promise to work with sincerity in future and carry out official duties to the best of my capability.”

13.3 In this representation, the respondent No.4 has written in his own handwriting that, “Sh. Sarkar promised to discharge his responsibilities with sincerity in future. Director RRCAT is requested to keep this letter in record.” These remarks have been agreed to by Director, RRCAT.

13.4 From the above, it is evident that the applicant has never submitted his performance figures in his representation and he has withdrawn the same on his own accord.

14. Perusal of the confidential report (Annexure A-11) indicates that it was accepted by Shri V.C. Sahni, Director on 23.06.2009. Therefore, for the applicant to implead Doctor P.D. Gupta, Director RRCAT as respondent No.3 was not correct in the first place.

15. During the course of hearing, when the issue of the certificate issued by respondent No.4 on May, 2009 (Annexure A-31) was raised, it was argued that when the respondent No.4 has given the certificate that no employee below Scientific Officer/C is rated less than average then how can the applicant be rated below average. In this regard we read the full certificate which has been given by respondent No.4:

Sr. No.	Particulars	Certificate to be provided
2)	The final grading of the employee in the Confidential Report of the preceding calendar year should be "Average" or above	It is certified that no employee in my Division/Section in the grade below Scientific Officer 'C' and equivalent technical grade is rated less than "Average" in their performance grading. The CR grading for Scientific Officer "C" and equivalent technical grade and above may be obtained from Director's office, and for all Administrative/Auxiliary staff may be obtained from Administration Section.



15.1 When it was asked whether the applicant was below Scientific Officer ‘C’, it was confirmed by the applicant, who was present in the Court, that he was Scientific Officer ‘E’ in Grade Pay 5400/- and Scientific Officer ‘C’ also has the Grade Pay of Rs.5400/-. Thus, the applicant does not fall in the category “Below Scientific Officer ‘C’ and equivalent technical grade. Therefore, the argument of the applicant that none of the officers has been given below average does not hold water.



16. The applicant has emphasised at several points that he is a Mechanical Engineer and his job has not been correctly assessed by an Electrical or Electronics Engineer. In this regard, the respondents in their reply and arguments have emphasised that all the Heads of the Section and Head of Division have rich experience of handling activities in multi disciplinary areas related to their projects. The area of laser system engineering pursued in the Laser Systems Engineering Division (LSED) involves various disciplines namely, Electronics/Electrical Engineering, Mechanical Engineering and Physics.

16.1 It is an established fact that any R&D Lab or Centre for Advanced Technology, as the respondent department is, will draw upon the expertise of various departments. It is the skill of the leader of such groups to extract the

maximum from persons of various disciplines, who are working in his team. Therefore, for applicant to insist that he should be posted only under a Mechanical Engineer is devoid of any merit.

17. From the above deliberation, we do not find any merit in the points raised by the applicant regarding his prayer for upgradation of his CR for the relevant year 2008-09.

18. As far as grant of PRIS is concerned, it has been mentioned by the respondents that this has already been paid to him.

19. Accordingly, the Original Application is dismissed as being devoid of any merit. No costs.



(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-