

In the Central Administrative Tribunal
Principal Bench: New Delhi

OA No.874/89

Date of decision: 10.07.1992.

Shri P.B. Varde

...Applicant

Versus

Union of India & Others

...Respondents

Coram:-

The Hon'ble Mr. T.S. Oberoi, Member (J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the applicant

: Shri B.B. Raval, counsel.

For the respondents

: Shri A.K. Sikri with Shri
V.K. Rao, Counsel.

1. Whether Reporters of local papers may be allowed to
see the Judgement? *yes*
2. To be referred to the Reporter or not? *y/s*

I.K. Rasgotra
(I.K. Rasgotra)
Member(A)

T.S. Oberoi
(T.S. Oberoi)
Member(J)

(19)

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CORAM :-

THE HON'BLE MR T.S. OBEROI, MEMBER (J)

THE HON'BLE MR I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT : SHRI B.B. RAVAL, COUNSEL.

FOR THE RESPONDENTS : SHRI A.K. SIKRI, WITH SHRI V.K. RAO,
COUNSEL.

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR I.K. RASGOTRA, MEMBER (A))

Dr P.B. Varade, has filed this Original Application on 24th April, 1989 assailing DO letter No 3-1/82-AU dt 15.4.88, read with ICAR LETTER No 5-1/85-AU dated 28.3.1988 informing the Director IARI that the case of the applicant for review of the assessment result has been considered by the Board, but it has recommended 'no change' in the assessment in respect of the applicant.

2. The applicant joined the Indian Agricultural Research Institute, Pusa (IARI) in the capacity of Scientist S-1 on 31.8.1978. He became eligible for promotion/advance increments after expiry of a period of 5 years service in the S-1 Grade in accordance with the provisions contained in Rule 19 of Service Rules for Agricultural Research Service. IARI is a 'Unit' of ICAR and follows merit promotion scheme on the basis of

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the principle of flexible complementing within specified parameters.. The 5 yearly assessment is based on the peer review system through an 'Assessment Committee consisting of five external Members of the concerned discipline which is presided over by the Chairman, Agricultural Scientists Recruitment Board (ASRB for short). According to the applicant the detailed criteria has been laid down for such five yearly assessment and the assessment Board is required to take into consideration the following factors :-

- (a) Professional performance in relation to duties and tasks assigned.
- (b) The spirit of cooperation and team work.
- (c) Managerial/Organisational abilities/attributes and
- (d) The personal/behaviour abilities/attributes.

In the assessment, considerable emphasis is laid on the contribution and achievements of the individual in relation to the requirements, duties and responsibilities of the job assigned to the Scientists. This is sought to be achieved by taking into consideration

- (i) Material furnished in the five yearly assessment proforma.
- (ii) Research project files maintained by the Scientists.
- (iii) Bio-data and career information.

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- (iv) Confidential character Rolls for the past 5 years.
- (e) Personal discussion if so desired by the Scientist concerned.

The Agricultural Research Service Rules also provide weightage to the following inputs for the cumulative assessment :-

- (i) 20% marks for annual assessment reports
- (ii) 15% marks for the recommendations of Head of the division and Director in the 5 yearly assessment proforma.
- (iii) 65% marks to the job accomplishment with respect to the goals assigned including research papers/reports, brouchers issued on the basis of the work done during the period of assessment. The evaluation so made also takes into consideration the constraints under which the Scientists work.

Further the (ICAR) have provided a mechanism for review of assessment results of those Scientists who are not found suitable for promotion to the next higher grade. For this purpose, such Scientist as fail to make the grade for promotion may submit a note containing 500 words through Director of Institute in support of their claim for promotion retrospectively from the due date.



4. The applicant was considered by the Assessment Committee, for merit promotion for the period ending 3/83, but ^{was} not recommended for promotion to the higher grade of S-2, possibly on account of the fact that Respondent No.5 had recorded some 'adverse remarks' on 23.5.1985, while his five yearly assessment was due to be held by the Assessment Committee on 27.5.1985. The applicant, therefore, alleges bias, malafide and caste prejudices against the Respondent No 5, as he belongs to the Scheduled Castes. He further submits that the 'adverse remarks' recorded by the Respondent No 5, were expunged vide communication dated 10.6.1987 by the Director, IARI, Pusa after considering his representation dt 9.7.1985. Thereafter, the applicant filed an application in July, 1987 requesting review of his five yearly assessment for the period ending March, 1983. The review was conducted by the Assessment Committee headed by the Chairman of ASRB in New Delhi on 30.1.1988. He was again not found suitable for promotion to the next higher grade of S-2 for the assessment period ending March 1984 by the same Assessment Committee as conducted the review assessment on 30.1.1988, for the period ending Dec. 1984. The applicant has alleged malafides, partisan interest etc. on the part of the Head of the Division and some Members of the Assessment Committee who were allegedly influenced by the Head of the Bio-Chemistry Division etc. Although considerable time and energy was spent by the applicant and the Learned Counsel for the applicant, in building up the facade of caste prejudices etc. but this need not detract ^{us} from the main issue regarding the assessment /reassessment of the applicant by the Assessment Committee.

The principal relief claimed by the applicant is that the Respondents be directed to give promotion to the next higher grade of S-2 to the Applicant retrospectively from due date of 1.1.84 & the recommendations of the ASRB contained in the impuned letter dt 28.3.1988 and 15.4.1988 in respect of the applicant quashed.

5. The Respondents in their counter-affidavit have not disputed the procedure required to be followed by the Assessment Committee for five-yearly assessment, as narrated by the applicant in the O.A. and referred to in the paragraph 2 above. They, however, affirm that the Assessment Promotion Committee considers the candidate purely on merit for promotion to the next higher grade in accordance with the procedure set out in the Rules. The Assessment Committee comprise eminent Scientists of high repute and status, with equally high credentials. They further contend that the Review Note of the applicant containing 500 words was forwarded to ASRB with the Director's recommendation. However, the Review Assessment Committee in its meeting held on 30.1.1988 did not recommend the case of the Applicant for promotion to the next higher Grade. In fact, they recommended 'no change' in the assessment earlier made by them. The applicant was never-the-less granted two advance increment as recommended by the Committee. They refute the allegation of malafide, bias and caste prejudice and submit that the Assessment Committee comprised eminent bio-chemists including one-time President of Bio-chemists Society of India. The Committee reviewed cases of 18 Scientists including the applicant out of which two Scientists were recommended for promotion, having regard to the criteria laid in Agricultural Research Services (ARS) Rules. They also resist the allegation that impediments were placed to allow the

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applicant to proceed with his research on the projects assigned to him.

6. The applicant has filed rejoinder reiterating his position and has referred us to the Hon'ble Supreme Court decision in Y.P. Gupta Vs. Union of India (ICAR). He has also filed some additional documents in support of his contention, regarding malafides etc. Shri B.B. Raval, learned counsel for the applicant has cited a catena of judicial pronouncements which are listed in the margin below.*

On the conclusion of the hearing the applicant also filed written arguments on 31 March 1992.

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- * 1. Amarnath Choudhary Vs. State of Bihar (SC) 1984 (1) SLJ 356 (Para P-359)
 - * 2. M.M. Sreenivasa Rao Vs. Director General P&T 1985(2) SLJ 115 Kerala HC (Para 10, P-120)
 - * 3. Sukumaran Vs. State of Kerala 1979 KLT 713 quoted in Sr No.2.
 - * 4. Y.P. Gupta Vs Union of India (ICAR) AIR 1984 SC (Page 541) Para 31, 32 (P-557) Para 34 CP-557-558 Para 16 (P-550)
 - * 5. Suvansu Kumar Mohanty Vs State of Orissa Heade Note, SLH 1990 (2) 128 (Para 11 P-135).
 - * 6. G.P. Mathur & Others Vs State of Rajasthan 1988(1) SLJ (CAT) Page 1
 - * 7. Gita Ram Gupta Vs Union of India Delhi High Court 1979 SLJ (Delhi) 727 Para-7
 - * 8. Gurdial Singh Fiji Vs State of Punjab and others (SC) 1979 SCR 513/AIR 1979 SC 1622.
 - * 9. Dilip Kumar Vs State of M.P. & Others (Madhya Pradesh High Court) 1984 (1) SLR 58.
 - *10. M.G. Sirsikar Vs State AIR 1967 Mysore 136
 - *11. Vijay Kumar Vs State of Maharashtra (SC) AIR 1988 2060.
 - *12. State Electricity Board Vs. Kharak Singh Supp.SCC(4) 1990 Supp. (L&S) 597.

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7. We have heard Shri B.B. Raval, learned counsel for the applicant and Shri A.K. Sikri with Shri V.K. Rao, learned counsel for the respondents. Keeping in view the essential facts shorn of the trivialities, as briefly brought out above, we directed the respondents to file proceedings of assessment of the Assessment Committee held on 27.5.1985 for the 5 yearly period ending March 1983, the review proceedings for the same period held on 31.1.1988 and the reassessment for the period ending 1984 held on 30.1.1988 and the reassessment for the period ending 1984 held on 30.1.1988 by 31.3.1992. Since the respondents failed to file the complete relevant record as per our direction above, the case was listed on 5.5.1992 and on that date the summary sheet giving final assessment of the Assessment Committee filed earlier was returned to them and the respondents directed to file all the relevant record on or before 12.5.1992.

8. The file relating to assessment proceedings in respect of the applicant containing pages 1-53 was eventually made available on 27.5.1992 together with an affidavit, stating that all the relevant records in regard to the assessment held on 27.5.1985 for the period ending March, 1983, review proceedings for the period ^{ending March} 1983 held on 31.1.1988 and the assessment for the period ending 1984 held on 31.1.1988 have been filed and that there was no other record, besides the one filed along with an affidavit.

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9. We have carefully considered the matter and perused the relevant record filed by the respondents. Although Shri A.K. Sikri made a very neat presentation of the case of the respondents, unfortunately the record does not seem ^{to} uphold his presentation of the case. It is observed that the 5 yearly assessment form comprises Part-I, Part-II and Part-III which generally relate to bio-data, time spent by the applicant on the various activities e.g. Research, Research Management, Teaching Training etc.; Part IV is to be filled in by Head of the Division and Part-V by the Director, IARI. In Part-IV of the form the Head of Division (Biochemistry) inscribed the following remarks on 20.10.1984. "Significant progress in research work and satisfactory achievements have been made". In Part-V the Director, IARI had given the overall assessment to the effect "Good worker doing useful work", (pages 1-8 of the record). Pages 9 to 23 list various projects on which the applicant had been engaged in research and the publications to his credit. Pages 24 to 28 relate to supplementary information furnished by the applicant for subsequent assessment for period ending March, 1984 for merit promotion. The head of the Division and Director, IARI have recorded the following remarks in Part-IV and Part-V of the proforma in respect of the performance of the applicant:-

Critical evaluation

Remarks of HOD

Part IV

Critical evaluation w.r.t. candidates contribution as listed above in the field of research, teaching, training expansion etc.

Dr.Varade has published three research papers and his overall Research performance has been **very good**. (emphasis supplied).

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I recommend him for promotion
to S-2 Grade w.e.f. 1.1.1985.

- (ii) Part-V
Overall assessment "Recommended for promotion
to the next higher Grade".
- (iii) Pages 29 to 40 relate the achievements of
individual in the field of Research assigned
to him.
- (iv) Pages 40 to 44, relate to the representation
of the applicant addressed to the Chairman,
ASRB reiterating that his Research career
during the 5 yearly period ending 1983 has been
such as to earn him a merit promotion. He
has further submitted that possibly 'adverse
remarks' given in his RPF 1983 (which were
later expunged) might have influenced the Committee
in denying him the promotion. He herefore
requested that his case for merit promotion
may be reviewed. Page-46 of the file is the
Office order dt 10.6.1987 according to which
'adverse remarks' given on the RPF-II were
expunged.
- (vi) Page 47 is an undated Note recorded by the
Director IARI which makes a strong case for
the promotion of the applicant and which is

reproduced hereunder :-

"Dr P.B. Varade was due for promotion to S-2 grade w.e.f. 1.7.1984 on the basis of his five yearly assessment for the period ending 31.12.1983 but he was granted two advance increments w.e.f. 1.7.1984. He has achieved a major break-through in increased symbiotic nitrogen fixation by the application of lower concentration of the nitrate to the plant appears to be the key to the increased nitrogen metabolism resulting in the increase in yield. This has an important bearing on farmers in so far as the increase in field of the legume crop is concerned.

Another significant achievement has been that guar oil causes fatty liver., induces atherosclerosis and increase body lipids. These findings led to dispense with gaur oil for human consumption, through it was recommended earlier on the basis of data comparable with edible oils.

Dr P.B. Varde's case was already recommended for promotion to the next higher grade with retrospective effect both by the Head of the Division and the Director

In view of the above it is recommended that Dr Varade may be promoted to the next higher grade with retrospective effect."

Sd/-
(A.M. Michael)
Director

Finally we come to page 48, 51 & 53 of the record file. Pages 48 & 52 gives the review assessment held on 30.1.1988 for the period ending March 1983. A note at the end the proforma reads the recommendation of the Committee, will be as follows :-

A+ ---means merit promotion to the next Grade.

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(ii) 'C' --- means -- No change.

Although in Column for yearwise assessment the applicant is graded B+, yet the final recommendation of the Review Committee is C-(minus), 'no change'. The final assessment also takes into account the recommendation of the Head of Division & Director of IARI respectively which are **"Good worker, doing useful work"** and **"Recommended to the Promotion for the next higher Grade with retrospective effect"**. (Emphasis supplied)

(iii) Page 50 of the record contains five yearly assessment of the applicant held on 30.1.1988 for the period ending 31.12.1984 and has been signed by all the Members and the Chairman of the ASRB. The applicant has been granted marks for the various factors as under:-

Marks to be awarded	Recommendations by superiors	Job accomplish- ment.	Total marks
(20)	(15)	(65)	(100)
12	10	4	26

(Figures in bracket denote total marks)

The Committee, accordingly assessed him as 'C' for 1984, with remarks **"Very poor, Lacked elementary knowledge of his area of research."** (Emphasis supplied)

After considering the discussion of the record, as above, we are of the opinion that the Assessment made by the Committee does not appear to be in line with the supplementary information furnished by the applicant and the remarks of the Head of the Division and the Director IARI page-28. The remarks of the Head of the Division had/ mentioned

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that the applicant has published three Research papers and his overall research performance has been very good. I recommended him for promotion to S-II Grade w.e.f. 1.1.1985 and Director recommended for promotion to the next higher Grade" don't appear to have been given due weight. In absence of any other material which supports the conclusion arrived at by the Committee we feel that assessment has not been just and fair. We further observe that the Director of the Institute had given detailed and highly commendatory remarks in his note (Page 47 of the record & reproduced earlier) on the work accomplishment of the applicant which ordinarily would have been of high consequence in the assessment for 1984. As against this Committee awarded him only 4 marks out of 65 marks allocated for 'job accomplishment' and stated that the applicant lacked knowledge of his area of research.

In the absence of any material which would support allocation of 4 marks out of 65 marks for 'job accomplishment', (and there is no other material except what is before us), we cannot ^{but} come to conclusion that the assessment made for the period ending 31-12-1984 is perverse as the assessment of the Committee does not reconcile with either the record note of the Director of the Institute and the record of the applicant.

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Undoubtedly the record note of the Director of the Institute is undated record filed by the respondents indicates that the said document was before the Assessment Committee for assessment of the period ending December, 1984. Further, although we do not find similar assessment/ allocation of marks on the proforma used for the period ending 31.12.1983 as done for the period ending 1984, we do not intend to pursue any further. Incidentally, final sheet of the assessment for 1983 is also not signed by the Members of the Assessment Committee although it bears the signature of the Chairman, ASRB.

In the above conspectus of the case, we quash and set aside the proceedings of Assessment Committee for the period ending December, 1984 holding them perverse, as not supported by the record. We further direct that the respondents shall constitute a fresh Assessment Committee to reassess the applicant for five yearly period ending December, 1984 and if the applicant is found suitable for promotion, he shall be considered for promotion to S-2 grade with effect from 1.1.1985 with consequential benefits.

The Respondents are further directed to implement the above orders with utmost expedition but preferably within sixteen weeks from the date of communication

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of this order.

In the circumstances of the case we also award costs amounting to Rs 500/- payable to the applicant by the respondent within the period as indicated above.

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A)

10/7/92

T.S. Oberoi
(T.S. OBEROI)
MEMBER (J)