

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/00417/2020

Date of order: 24.6.2020

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Dr. Sumanta Kumar Ghosh,
Son of Shri Prasanta Kumar Ghosh,
Aged about 53 years,
Presently working as
Professor of General Surgery at ESI-PGIMSR
ESIC Medical College Joka,
Diamond Harbour Road,
Kolkata – 700 104,
Permanent resident of 3-B,
Rammohan Mallick Garden Lane,
Manikarni,
Flat – 6 EB,
Beliaghata,
Kolkata – 700 010.

VS:

1. The Union of India,
Service through the Secretary,
Ministry of Labour and Employment,
Shram Shakti Bhawan,
Rafi Marg,
New Delhi – 110 001.
2. The Secretary,
Department of Personnel & Training (DOPT),
Government of India,
North Block,
New Delhi – 110 001.
3. The Under Secretary to
The Government of India,
Ministry of Personnel, Public Grievances and Pension,
Department of Personnel & Training (DOPT),
Government of India,
North Block,
New Delhi – 110 001.

4. The Director General,
Employees' State Insurance Corporation,
Panchdeep Bhawan,
Comrade Indrajeet Gupta (CIG) Marg,
New Delhi - 110 002.
5. The Medical Commissioner (Medical Education),
Employees State Insurance Corporation,
Panchdeep Bhawan,
Comrade Indrajeet Gupta (CIG) Marg,
New Delhi - 110 002.
6. The Dean In-Charge,
ESIC Medical College Joka,
Diamond Harbour Road,
Joka,
Kolkata - 700 104.
7. The Assistant Director and APAR Custodian,
ESIC Medical College, Joka,
Diamond Harbour Road,
Joka,
Kolkata - 700 104.

.....Respondents

For the Applicant : Mr. B. Nandy, Counsel

For the Respondents : Mr. S. Chowdhury, Counsel

O R D E R (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

Being aggrieved with non-disclosure of APAR of 2017-18 and downgrading of his APAR of 2018-19, the applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, praying for the following relief:-

- "(a) An order do issue directing thereby the Respondent No. 4 to issue 'No Report Certificate' (NRC) to the applicant for the APAR year 2017-18, since the APAR Grading was not at all disclosed to the applicant.
- (b) An order do issue directing thereby the Respondent No. 4 to issue 'No Report Certificate' (NRC) to the applicant for the APAR year 2018-2019, since both the reporting officer and the reviewing officer grossly violated the DoPT instructions and AIS APAR (Amendment) Rules, 2019 while writing APAR of the applicant and further the Respondent No. 4 has failed to

461

APAR of the applicant and further the Respondent No. 4 has failed to dispose the APAR representation even beyond 90 days of the Govt. (DOPT) set deadline.

- (c) An order do issue directing thereby the respondent authorities to not to take into account the downgraded APAR for the year 2018-2019, in considering the future promotional aspects of the applicant as the same is wholly arbitrary, mechanical and is a result of total non-application of a clear and proper judicious mind.
- (d) Any other order and/or orders as the Hon'ble Tribunal may deem fit & proper."

2. The submissions of the applicant, in brief, is that the applicant is functioning as a Professor of Surgery with the respondent authorities since 13.3.2013. His overall APAR gradings has been 8, 8, 8, 9 for the period 2013-14, 2014-15, 2015-16 and 2016-17 respectively. The applicant's APAR gradings during the APAR year 2017-18 were never disclosed to him and also the APAR of 2018-19 was downgraded to a grade of 6.81. Further, DOPT norms were grossly violated in filling up the integrity column of the APAR as "satisfactory". The applicant had submitted representations to the competent respondent authority containing his point wise rebuttals supported by documentary evidence, within the prescribed time period. Although the date of disposal of such representation had expired on 23.11.2019, the competent authority failed to dispose of the same, and, accordingly, being apprehensive of adverse impact on his future career, the applicant has approached this Tribunal in the instant O.A. with his claim for NRC for the APAR years 2017-18 and 2018-19 respectively.

3. Ld. Counsel for the respondents would admit that there has been an inadvertent delay in disposing of the representation but would seek an opportunity to decide on the same, a prayer contested by his opponent Counsel who would urge for adjudication on merit. Ld. Counsel for respondents would oppose arguing that although the applicant insists on his inherent right to receive a "NRC" in the event of non disposal of

lub

representation within the scheduled time, no rules or circulars have been furnished in support of his claim.

4. Accordingly, in the interest of justice, and, without entering into the merits of the matter, we would, in partial relaxation of time limit laid down for this purpose, direct respondent No. 4, who is the Director General, Employees' State Insurance Corporation, New Delhi, or any other competent authority to examine the contents of the applicant's representation and to dispose of the same in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

The competent authority shall thereafter convey his decision to the applicant with a reasoned and speaking order.

5. The concerned respondent authority is also directed to disclose the APAR gradings of 2017-2018 to the applicant in terms of ratio contained in ***Dev Dutt v. Union of India & ors. [(2008) 8 SCC 725], Abhijeet Ghosh Dastidar v. Union of India & ors. [(2009) 16 SCC 146]*** and in abidance to DoPT instructions dated 14.5.2009.

6. With these directions, the O.A. is disposed of. There will be no orders on costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP