

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA



No. O.A. 350/01345/2020
M.A. 350/00060/2021

Date of order: 9.8.2021

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

Dhirendra Kumar Sinha,
Aged 62 years,
S/o. Late Shri Shiweswar Dayal,
Joint General Manager (Retired),
RITES Limited, Kolkata.

Resident of:

NRC-011, DLF New Town Heights,
New Town, Action Area - III,
Kolkata - 700 135.
Mobile No. : 9073399480

.... Applicant

- V E R S U S -

RITES Limited,
Through the Chairman-cum-Managing Director,
RITES Bhawan,
Plot No. 1, Sector - 29,
Gurgaon - 122 001.

.... Respondents

For the Applicant : Mr. T.R. Mohanty, Counsel

For the Respondents : Mr. S.K. Das, Counsel

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ORDER (Oral)**Per Dr. Nandita Chatterjee, Administrative Member:**

Aggrieved at his below bench mark grading as well as adverse remarks in his Annual Performance Appraisal Report for the year 2015-16, the applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

1. To allow the present Application;
2. To quash and set aside the Comments in the Integrity Column of the impugned Annual Performance Appraisal Report for the Year 2015-2016 [Annexure A-1].
3. To consequently quash and set aside the Comments in the impugned Annual Performance Appraisal Report for the Year 2015-2016 [Annexure : A-1] with regard to the Applicant being investigated by the Central Bureau of Investigation;
4. To consequently quash and set aside the Marks Awarded to the Applicant in the impugned Annual Performance Appraisal Report for the Year 2015-2016 [Annexure : A-1];
5. To consequently correct the Marks awarded to the Applicant in the impugned Annual Performance Appraisal Report for the Year 2015-2016 [Annexure A-1] from 58.3 to at least 80.3;
6. To consequently direct the Respondents to Review the Selection of the Applicant for the post Additional Director General (M&C) in terms of the corrected Marks awarded to the Applicant in the impugned Annual Performance Appraisal Report for the Year 2015-2016 [Annexure : A-1].
7. To consequently promote the applicant to the post Additional Director General (M&C) in view of such Review from the date the same was due;
8. To grant all consequential benefits permissible under the Rules and the Law in this regard, including arrears of Salary and Pensionary Benefits;
9. To grant compound interest on the arrear payments to be made to the Applicant;
10. To issue any such and further orders/directions this Hon'ble Tribunal deems fit and proper in the circumstances of the case; and
11. To allow exemplary costs of the application in favour of the applicant."

2. Heard both Ld. Counsel, examined documents on record. This matter is taken up for disposal at the admission stage.
3. Ld. Counsel for the applicant would submit that the applicant had joined as Assistant Director (Metallurgy) on 16.6.1995, and, thereafter, on 4.5.2007 had joined RITES Limited as Deputy General Manager (M&C). He

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was promoted to the posts of Senior Deputy General Manager (M&C) and Joint General Manager (M&C) respectively, and, thereafter, was called to appear before a Selection Committee on 16.11.2017 for appointment to the post of Additional General Manager (M&C).

The applicant is aggrieved that, although he was the only candidate to be considered for promotion to the said post of Additional General Manager (M&C), and, although, he did attend the interview, the outcome was never made known to him, and, accordingly, had approached this Tribunal in its Principal Bench in O.A. No. 100/00061/2018 (Annexure A-2 to the O.A.), which was disposed of with a direction upon the respondent authorities to communicate the outcome of the interview for promotion to the post of Additional General Manager (M&C) to the applicant.

That, thereafter, the authorities vide their communication at Annexure A-3 to the O.A., informed the applicant, that, as he could not secure the qualifying marks, namely, 80% marks in aggregate, he could not be recommended for selection as Additional General Manager (M&C) by the Selection Committee. The break up of the applicant's performance in the said selection was recorded as follows:-

APARs Score (last 5 years) (60)	Presentation (10)	Interview (30)	Total Marks (100)	Remarks
44	7	21	72	Fail

Thereafter, in response to an RTI application of the applicant, his APAR scores were disclosed on 3.5.2018 as follows:-

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Year	APAR rating
2009	VG
2010	79.0
2011	85.5
2012	83.02
2013	67.0
2014	83.4
2015	80.3
2016	58.8
2017	80.65
2018	Yet to be finalized. On finalization of the APAR, the same will be disclosed to Shri D.K. Sinha.

The applicant's Ld. Counsel admitted during hearing, that, for each reporting year, his APARs since 2009 had been duly conveyed to him by the respondent authorities and the applicant, having ascertained that his APAR scores for the last 5 years, being 44 as against the requisite score of 60, had prevented him from qualifying for selection to the post of Additional General Manager (M&C) and also being aggrieved with the comments on his "Integrity as doubtful", has approached this Tribunal for relief.

4. We find that akin to the applicant in **O.A. No. 1973/2014 (Tushar Ranjan Mohanty v. Union of India & ors.)** cited by the applicant, the applicant had preferred a representation in Annexure A-13 to the O.A., which states as follows:-

"Sir,

I have been given to understand that I have been absolved by CBI, Kolkata. In this regard I think I must share the kind of experience had and request the following:

1. Kindly release my PRP if at all due as my APAR was rated low out of frustration and personal agony.
2. Kindly expunge the remarks "Integrity Doubtful" endorsed in my APAR for the year 2015-16 and review my representation a fresh on the marks awarded although billing by me was highest 6.92 crores in the region during that period. He subsequently realized and rated me well in the year 2016-17 when Laboratory billing increased substantially that too I was attached to laboratory as a punishment by him. But this such rating was not taken in a good taste by the then accepting authority who was biased on me since

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2013 reduced 16 marks arbitrarily. Further CBI investigation was used a tool to spoil my career.

3. Please review the DPC held on 16.11.2017 for my promotion to the post of AGM in which I was the only candidate and that to on the verge of retirement on 31.1.2018.
4. My representation for fixation of my pay when the scale of pay of DGM was upgraded to Rs. 29100/- in the year 2008 still remained unattended.

With warm regards,
D.K. Sinha
Emp. No. - 11097"

This representation, however, was only made electronically on June, 2019, which is well after the due date of submission of representation towards review of APAR of 2015-2016 and does not advance enough reasons to merit an objective review.

5. In **State Bank Of India v/s A.P. Mathai, 1988(4) SLR 94 (bom)**, the Hon'ble Apex Court had ruled that the proper course would be to direct the competent authority to dispose of the representation and depending on the result thereof to reconsider the action taken.

In **Gunjan Prasad v. Government of India [MANU/CA/0278/2015]**, the Tribunal held as under:-

" The disposal of the representation must be made in a quasi judicial manner by a reasoned order on due application of mind."

6. Accordingly, we would dispose of this O.A. at the admission stage itself, by according liberty to the applicant to prefer a reasoned representation to the competent authority justifying his request for upgrading of his APAR and for expunction of the adverse remarks on his integrity (for the reporting year 2015-2016) within a period of 4 weeks from the date of receipt of a copy of this order.

In the event such representation is received, the competent authority shall decide on such representation, in accordance with law,

Sinha

and upon an objective review of his APAR gradings as well as on the remarks on his integrity, convey such decision to the applicant, within a period of 6 weeks thereafter.

7. Further, we make it clear that we have not entered into the merits of the matter and the respondents are at liberty to decide on the issues raised in accordance with law.

8. With these directions, the O.A. is disposed of. No costs M.A. bearing No. 350/00060/2021 is disposed of accordingly.



(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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