

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 475 of 2011

Tuesday, this the 15th day of May, 2012

CORAM:

Hon'ble Mr. Justice P.R Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

Saji K. Sam, Engineer (SF),
R&QA/ISRO Inertial Systems Unit,
Vattiyoorkavu,
Thiruvananthapuram-695 013.

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Applicant

(By Advocate – Mr. Vishnu S. Chempazhanthiyil)

V e r s u s

1. The Director, ISRO Inertial Systems Unit,
Vattiyoorkavu, Thiruvananthapuram-695 013.
2. The Director, Vikram Sarabhai Space Centre,
ISRO, Department of Space,
Thumba, Thiruvananthapuram-695 013.
3. The Chairman, ISRO, Department of Space,
Antariksh Bhavan, Bangalore-560 001. **Respondents**

(By Advocate – Mr. Sunil Jacob Jose, SCGSC)

This application having been heard on 11.04.2012, the Tribunal on

15/05/2012 delivered the following:

O R D E R

By Hon'ble Mr. K. George Joseph, Administrative Member -

This Original Application has been filed by the applicant with a prayer to direct the respondents to ignore the un-communicated down grading of his ACR for the years 2007 and 2008 and to consider him for assessment of promotion to the post of Scientist/Engineer (Selection Grade)

for the year 2009.

2. The applicant joined the Vikram Sarabhai Space Centre as Scientist/Engineer SG on 22.9.1986. Through career progressions he reached the level of Scientist/Engineer SF on 1.7.2004. He became eligible for being considered for promotion to the next higher grade of Scientist/Engineer (SG) in the DPC review as on 1.7.2009. He was screened out in the year 2009 and 2010 as his ACR grading and work done/efficiency during the relevant period were not up to the mark. Aggrieved the applicant has filed this OA.

3. The applicant contended that the rating of average (B) for the year 2007-2008 by the Director IISU overlooking the assessments of 'very good'/'tending to outstanding' made by the reporting officer, reviewing officer and counter signing officer has not been communicated to him which is illegal and arbitrary. The same cannot be relied upon by the DPC to deny promotion as Scientist/Engineer (SG) to the applicant. He relied upon the decision of the Hon'ble Supreme Court in Civil Appeal No. 6227/2008 which was followed by the Principal Bench in OA No. 592/2009 and OA No. 1135/2008.

4. The respondents in their reply statement submitted that the ACR grading of the applicant were not up to the mark. Therefore, he was not granted promotion to the post of Scientist/Engineer (SG). 'Average' entry not being adverse was not communicated to the applicant. The entries recorded in the ACR can be reviewed by the final accepting officer who has

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inherent power to down grade or upgrade the ratings in the ACRs.

5. In the rejoinder statement the applicant submitted that though the assessing officer has assessed the applicant as very good, it was at the instance of the Director, IISU the grading by the reporting officer and reviewing officer were down graded. The respondents are bound to produce the records to show that apart from ACR grading, the work done/efficiency during the relevant period was a factor in the applicant not getting screened in. No authority has ever intimated the applicant that his work was not up to the mark. It is not known how only in the years 2007 and 2008 the applicant's gradings were down graded in spite of honest and dispassionate assessment by the reporting officer and the reviewing officer. The reporting officer and reviewing officer are also senior officers with impeccable integrity, impartiality and objectivity. The DPC is expected to dispassionately assess the ACRs. The DPC is not to be governed by the entries in the ACRs. The 'Average' entry to the extent it has adversely affected the promotion of the applicant has the nature and character of an adverse entry and the same ought to have been communicated to the applicant. There exists no basis for down gradation of his ratings in the ACR. The applicant satisfied all the conditions prescribed in the rules for promotion as Engineer, SG. Non-suiting the applicant on the ground of not meeting the required bench mark on account of un-communicated down grading of the ACR of the applicant is illegal and arbitrary.

6. We have heard the learned counsel for the parties and perused the

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records and considered the rival contentions very carefully.

7. The Director, IISU was not directly supervising the applicant. The reporting officer who directly supervises the work of the applicant and the reviewing officer have given the applicant higher ratings which were down graded by the Director without showing the basis for such down gradation. Howsoever eminent a person may be, his eminence is not a guarantee that he is free from human frailties and is always objective in his assessment of his subordinates. In the instant case the Director should have substantiated with relevant details, the down grading of the applicant when the rating of the applicant was so drastically different from the assessment made by the reporting and reviewing officers, adversely affecting the promotion of the applicant. Making a vague observation like 'overrated' or 'more appropriate' covers up more than it reveals. ACR writing is sometimes misused to settle scores or to queer the pitch for officers who are disliked for one reason or the other. No human being is 100% objective. Checks and balances are built in the system to contain subjectivity in assessing the performance of officers. Higher the officer, higher the objectivity and judicious bent of mind. But that need not be the case always. That is why the DPC is expected to make its own assessment of ACRs and not blindly follow the ratings given in the ACRs. In the instant case the DPC screened out the applicant from consideration for promotion on the basis of the rating given by the Director. It ignored the fact that the officers who were immediate superiors of the applicant had given him higher ratings and the fact that down grading was not substantiated. This failure on the part of the DPC has vitiated the



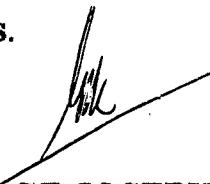
screening process.

8. Further 'average' is adverse remark when it deprives the affected officer of his promotion. In fact it is worse than an adverse entry because the affected person is not informed of it. The career of an officer is destroyed by below bench mark rating which is made under the cover of secrecy. A responsible and transparent system can never tolerate such deviant ways. The purpose of writing ACR is not to destroy the career of the officer reported upon. It is a tool to be used for development of human resources. In Dev Dutt Vs. Union of India 2008 (8) SCC 725 the Apex Court ruled upholding the principles of natural justice, that any grading below bench mark would have to be necessarily communicated to the concerned and on representation if the grading is upgraded the claim of the concerned has to be considered for promotion from the date his juniors had been granted the same with all consequential benefits in law. The DOP&T vide OM No. 22011/3/88-Estt.(D), dated 11.5.1990 has directed that where the un-communicated adverse remarks pertain to a period more than 3 years prior to the the year in which the DPC is held, the DPC may ignore the remarks while making the assessment. The Constitution Bench of the Apex Court in Abhijith Ghosh Dastidar Vs. Union of India in Civil Appeal No. 6227 of 2008 decided on 22.10.2008 that once the grading falling below the bench mark has not been communicated, it has to be ignored for consideration for promotion to the higher grade. The DPC did not take into account the above position of law and the direction of the DOPT, making the non-suiting of the applicant for promotion illegal and arbitrary.



9. In the result the above OA is allowed as under:-

The 3rd respondent is directed to ensure that a review DPC is held to consider the applicant for assessment of promotion to the post of Engineer (SG) for the year 2009 in accordance with law as laid down by the Apex Court and as per DOP&T guidelines within a period of 60 days from the date of receipt of a copy of this order. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R RAMAN)
JUDICIAL MEMBER

“SA”