

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 571 of 2013

Tuesday, this the 12th day of July, 2016

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member
Hon'ble Mr. Prasanna Kumar Pradhan, Administrative Member

K.N. Radhakrishnan Nambiar,
T-4 Technical Assistant,
Category-II, Central Plantation
Crops Research Institute,
Kasaragode – 671 124.

..... **Applicant**

(By Advocate : Mr. R. Rajasekharan Pillai)

V e r s u s

1. The Indian Council of Agriculture Research,
Krishi Anusandhan Bhavan,
PUSA, New Delhi-110 012,
Represented by the Secretary.
2. The Director, Central Plantation
Crops Research Institute,
Kasaragode – 671 124.
3. The Assessment Committee for Technical Personnel,
Represented by its Chairman, CPCRI,
Kasargode, Pin – 671 124.

..... **Respondents**

(By Advocate : Mr. P. Santhosh Kumar)

This application having been heard on 15.06.2016, the Tribunal on

12/07/2016 delivered the following:

ORDER

Hon'ble Mr. U. Sarathchandran, Judicial Member -

The applicant is a Technical Assistant Grade-IV (T-4 Grade). In 2010 while working as T-3 grade he was considered for assessment for promotion



in the five yearly assessment under the Career Advancement Scheme but he was granted only one increment with effect from 5.4.2010 in lieu of conferment of T-4 grade. The reason for non-granting him T-4 grade in 2010 was that he did not secure 'Very Good' in the overall assessment in the Annual Confidential Report (ACR)/Annual Performance & Appraisal Report (APAR) where he had secured only 'Good'. The ACRs/APARs which were taken in to consideration for assessment in 2010 were not communicated to the applicant. Only in December, 2012 the respondents communicated the ACRs/APARs and he was granted promotion vide Annexure A8 order dated 30.5.2013 with effect from 5.4.2012. Applicant contends that since he was declined promotion in 2010 relying on the uncommunicated ACRs/APARs, the promotion granted vide Annexure A8 after taking into consideration of the subsequently communicated same ACRs/APARs, he is entitled to be conferred with T-4 grade retrospectively with effect from 5.4.2010. The applicant prays for:

"I. Call for the records leading to and culminating in Annexure A1, AIII and AV quash the same as arbitrary, illegal, unconstitutional and opposed to the principles of natural justice.

II. Direct the respondents to of confer T-4 grade to the applicant retrospectively with effect from 5.4.2010 and recompute the applicant's pay and ad other benefits in accordance with such conferment of T-4 grade and disburse arrears there from.

III. Award costs to the applicant."

2. Respondents opposed the OA stating that according to the Modified Technical Service Rules (TSR) of the respondents organization, the weightage given to the ACRs/APARs is limited to 80 marks out of 100 and the remaining 20 marks is the discretion of the assessment committee after

evaluating the material furnished in the assessment proforma. The aforesaid Modified Technical Service Rules, came into existence with effect from 26.12.2005 vide Annexure R2(b). The bench mark concept of 'Good', 'Very Good' and 'Outstanding' is no longer applicable for the assessment promotion of technical staff. Respondents state that as per the earlier practice ACRs/APARs were not disclosed to the officer reported upon except in cases of adverse remarks in the ACRs/APARs. Currently, with effect from 2008-09, copies of the ACRs/APARs are communicated to the officer reported upon irrespective of the grading providing an opportunity to make representation against the entries and final grading. The ACRs/APARs for the period 2009-10 were provided to the applicant. As per the instructions of respondent No. 1 Council, ACRs/APARs for the remaining period i.e. from 2005-06, 2006-07, 2007-08 and 2008-09 were also provided to the applicant vide Annexure A7 communication with an opportunity to represent against such ACRs/APARs. The representation submitted by the applicant was carefully considered by the competent authority but no justification was found for upgrading the overall grading for the period 2005-06 to 2008-09. The decision so taken was communicated vide Annexure A5. As per provisions of the TSR, applicant was considered for supplementary assessment for the period 2010-11 but he did not secure the required marks for promotion. In the subsequent assessment period for 2011-12 the applicant had sufficient marks and the assessment committee decided to promote him to T-4 grade with effect from 5.4.2012 vide Annexure A8. Respondents pray for rejecting the OA.

3. Heard Shri R. Rajasekharan Pillai, learned counsel for the applicant and learned Standing Counsel for the respondents. We have also heard Mr. Jairam Naik, Administrative Officer of respondent No. 2, who produced the proceedings of the assessment committee (Category-I & II – Field/Farm Operations) held on 28.5.2013 which led to the issuance of Annexure A8 order. He had also produced the proceedings of the assessment committee meeting held on 9.5.2012 in which Annexure A1 decision was taken declining promotion to T-4 to the applicant and granting him only one advance increment with effect from 5.4.2010 instead.

4. We have perused the relevant guidelines contained in Annexure R2(b) for granting merit promotion under Rule 6 of the Technical Service Rules followed by the respondent organisation. The guidelines clearly state that for considering the cases for Career Advancement of Technical Employees the following materials shall be taken to consideration for assessment as per Appendix-III Handbook of Technical Service Rules:

- a. The material furnished in the 5/7/10 yearly assessment Proforma.
- b. ACRs for the past 5/7/10 years.
- c. Performance record files maintained by the technical personnel.
- d. Biodata and career information (various posts held etc.) of the technical personnel throughout their service in the ICAR."

5. Even as per the modified guidelines for Career Advancement Promotion which came into force from 26.12.2005, the ACRs/APARs do form a criterion for promotion besides the marks awarded by the assessment committee based on evaluation of the career information of the candidate.

3

As per paragraph 3.3 of Annexure R2(b) guidelines the ACR/APAR for the relevant period is considered by the assessment committee in the following manner:

“3.3 The ACRs relevant for the assessment period (5/7/10 years as the case may be) are to be numerically rated on the basis of final grading as accepted/approved by the Reviewing Authority in the following manner:

- | | | | |
|------|-------------------------|---|-----------|
| i) | Each Outstanding Report | - | 80 marks |
| ii) | Each Very Good Report | - | 60 marks |
| iii) | Each Good Report | - | 40 marks |
| iv) | Each Average Report | - | 20 marks” |

Paragraph 4 of the Annexure R2(b) reads:


“4. The Assessment Committee shall examine the other material, as referred to in the foregoing para 1, and award marks on a scale of 20. The marks so awarded out of 20, shall be added to the marks awarded on the basis of the evaluation of ACRs. The merit promotion from one grade to next higher grade shall be made only if an employee meet the following threshold:

- | | | | |
|-------|--|---|------------|
| (i) | For promotion from T-1 to T-2 grade
and T-2 to T-3 grade | = | 60% |
| (ii) | <u>For promotion from T-3 to T-4 grade</u>
<u>T-4 to T-5 grade and T-5 to T-6 grade</u> | = | <u>67%</u> |
| (iii) | For promotion from T-6 to T(7-8)
and from T(7-8) to T-9 grade | = | 75% |

0.5% and above marks are to be rounded off to the next higher number.”

(underlining supplied)

6. Thus, it is clear from the aforementioned guidelines that the erstwhile criteria of 'Good', 'Very Good', 'Outstanding' etc. have been done away with and that marks as indicated in paragraph 3.3 of the guidelines quoted above are assigned to the ACR/APAR gradings instead. The mark so obtained on the basis of the ACRs/APARs for the relevant period and the marks



awarded by the assessment committee for the other materials (maximum of 20 marks) form the basis for considering the employee for promotion.

7. When applicant was considered for promotion for the 1st time in the Annexure A1 assessment process, his ACRs/APARs for the period from 1.4.2005 to 31.3.2010 were taken into consideration. The 'score card' produced by the Administrative Officer of respondent No. 2 at the time of hearing of this OA indicates that the assessment committee in its meeting held on 9.5.2012 considered the assessment report of the applicant for the period from 5.4.2005 to 4.4.2010. The marks assigned to him for the ACRs/APARs of different periods are :

Evaluation of AAR	
Period	Mark Scored Max. 80
(6)	(7)
01.04.2005 to 31.03.2006	40
01.04.2006 to 31.03.2007	40
01.04.2007 to 31.03.2008	40
01.04.2008 to 31.03.2009	40
01.04.2009 to 31.03.2010	40
	200/5

For the remaining 20 marks the applicant could obtain only 9 marks. The applicant had scored only 49 marks out of 100. As he had not obtained 67 marks as per the guidelines [Annexure R2(c)] he was found not eligible for promotion. However, he was granted one advance increment with effect from 5.4.2010. It appears that, in the meantime, the respondents have communicated the ACRs/APARs of the applicant for the period from 2005-06 to 2008-09 vide Annexure A7 communication and called for representations, if any, against the entries and the final grades given in those

ACRs/APARs. However, his representations were rejected by the competent authority on 16.4.2013 vide Annexure A5.

8. Respondents state that the applicant was subjected to supplementary assessment on two occasions also i.e. for the promotion due on 5.4.2011 and for the promotion due on 5.4.2012. His 2nd supplementary assessment was done in the meeting of the assessment committee held on 28.5.2013 and he was promoted to T-4 grade with effect from 5.4.2012 vide Annexure A8 order. The copy of the proceedings of the assessment committee on 28.5.2013 and the score card of the applicant produced by the Administrative Officer of respondent No. 2 indicates that the ACRs/APARs taken into consideration by the respondents were for the period from 5.4.2005 to 4.4.2010 plus 4.4.2011 and 4.4.2012. The aforesaid score card reads:

Evaluation of AAR	
Period	Mark Scored (Max. 80)
01.04.2005 to 31.03.2006	40
01.04.2006 to 31.03.2007	40
01.04.2007 to 31.03.2008	40
01.04.2008 to 31.03.2009	40
01.04.2009 to 31.03.2010	40
01.04.2010 to 31.03.2011	60
01.04.2011 to 31.03.2012	60

The applicant has secured 19 marks out of 20 for the other activity reports. It has to be significantly noted that the mark awarded for the ACR/APAR for the period from 1.4.2010 to 31.3.2011 was 60 and that for the period from 1.4.2011 to 31.3.2012 also he has scored 60. In the assessment made




on 28-5-2013 applicant could score a total of 67 marks which was the basic requirement for promotion from T-3 to T-4 grade as per Annexure R4(c) guidelines (amended).

9. Applicant contends that since promotion declined by Annexure A1 was on the basis of un-communicated ACRs/APARs, in the light of the Apex Court decision in *Dev Dutt v. Union of India & Ors. - 2008 (8) SCC 725* and in the light of the Hon'ble High Court of Kerala's decision in *Dr. M. Shanavas v. ICAR*, it should be held that Annexure A1 decision declining promotion to him with effect from 5.4.2010 should be treated as non-est and therefore, the promotion he secured subsequently vide Annexure A8 should be treated as promotion due to him with effect from 5.4.2010 instead of 5.4.2012. True in *Dev Dutt*, the Apex Court has laid down the law that nomenclature like 'Good' in the ACRs/APARs is not relevant and that it is the effect which the entry is having which determines whether it is an adverse entry or not. It was also held by the Apex Court that the grant of 'Good' entry is of no satisfaction to an incumbent if it in fact makes him ineligible for promotion or if it has adverse effect on his chances. The Apex Court held that non-communication of such entries even though such entries are 'Good' if it has adverse effect upon the incumbent, the same should have been communicated to him/her. In the instant case when Annexure A1 decision was taken by the respondents not to promote the applicant to T-4 the ACRs/APARs relied upon by the respondents were admittedly not communicated to the applicant. However, before Annexure A8 decision was taken to promote him to T-4 grade, the



very same ACRs/APARs entries were communicated to the applicant giving him an opportunity to represent against the entries and gradings, but his representation met with rejection by the competent authority, without any alteration in the gradings and remarks. Nevertheless, those entries in ACRs/APARs which have been communicated to the applicant and relied upon by the respondents for the purpose of Annexure A8 assessment for promotion. This is perfectly valid because they have been duly communicated to the applicant, granting him opportunity to make representations. But when Annexure A8 assessment was made, we note that besides the aforesaid communicated ACRs/APARs two other ACRs/APARs i.e. for the period from 1.4.2010 to 31.3.2011 and 1.4.2011 to 31.3.2012 also were taken into consideration, which were in fact having gradings of 'Very Good'. Therefore the applicant received 60 marks for each of those later ACRs/APARs. Those two ACRs/APARs have indeed been communicated to the applicant.

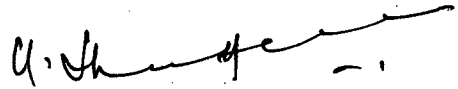
10. In the aforesaid circumstances we are of the view that the applicant could secure T-4 promotion vide Annexure A8 only because of the betterment of scores in respect of the 'Very Good' ACRs/APARs he could obtain and also due to the awarding of 19 marks out of 20 for his other records. The applicant could achieve betterment of his scores only after Annexure A1 assessment and therefore he cannot claim the benefit of those scores retrospectively from 5.4.2010. Therefore we are of the view that the applicant is not entitled to the relief sought for in this Original Application.



11. The Original Application is dismissed. No order as to costs.



(PRASANNA KUMAR PRADHAN)
ADMINISTRATIVE MEMBER



(U. SARATHCHANDRAN)
JUDICIAL MEMBER

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