

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA 612/2013

Friday, this the 7th October, 2016

CORAM

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member

Hon'ble Mrs. P. Gopinath, Administrative Member

K.S. Sunilkumar
T.C. 7/739 (2), Sindhooram
Koura-23, Kochulloor
Medical College P.O.
Thiruvananthapuram-695 011.

Applicant

(By Advocate: Mr. Vishnu S. Chempazhanthiyil)

Versus

1. The Chairman & Secretary
Department of Space
Indian Space Research Organization
Anthariksh Bhawan, New BEL Road
Bangalore-560 231.
2. The Director
Vikram Sarabhai Space Centre
Thumba, Thiruvananthapuram-695 022.

Respondents

(By Advocate: Mr. N. Anilkumar, Sr. PCGC)

The application having been heard on 5th September, 2016, this Tribunal delivered the following order on 7th October, 2016:-

ORDER

By P. Gopinath, Administrative Member

Applicant is aggrieved by the denial of promotion to the category of Engineer SF Grade under the second respondent. The applicant entered service in VSSC on 23.12.1985 as Engineer SB (Computerization). He was



promoted as Engineer SC w.e.f. 1.1.1991 and Engineer SD w.e.f. 1.7.2003.

He retired as Engineer SE Grade in 2012. The OA is filed seeking the following reliefs:-

(i) Direct the respondents to consider promoting the applicant to Engineer SF Grade from the entitled date.

(ii) Direct the respondents to consider ante-dating promotion of the applicant to the Grade of Engineer SE from due date and grant consequential promotion to the Grade of Engineer SF.

2. According to the applicant, certain below average bench mark gradings in his ACR recorded by the reviewing officer had resulted in denial of promotion.

3. Learned counsel for the applicant contends that the applicant had completed 8 years and 8 months as Engineer SE and had to retire in the same post. In the service book of the applicant, the designation of the post on first appointment was recorded by omitting the word computerization and that he was wrongly recorded in Civil category (Construction Wing). Because of the omission, the applicant was screened under the civil category instead of computerization category. Despite various representation in that regard, no reply was given to the applicant and the applicant was in fact kept in the dark about the entry recorded in his service book. He became aware about it only through information under RTI Act. Service book was not shown to the applicant at any point of time before his voluntary retirement. Collecting this information took a considerable amount of time and hence the delay in filing the OA. The final grading given to the applicant for the years 2003 to 2006



were all below bench mark grading of outstanding and the same was not communicated. Annexure A8 representation as well as Annexure A10 to A13 judgments relied upon by the applicant did not elicit any reply. Hence this OA.

4. Respondents submit that the applicant entered service on 23.12.1985 as Engineer (SB) and he got three promotions in time as follows:

(i)Scientific Engineer (SB) 23.12.1985 (Entry Grade)


(ii)Scientific Engineer (SC) 1.11.1991

(iii)Scientific Engineer (SD) 1.7.1993

(iv)Scientific Engineer (SE) 1.7.2003.

5. Next promotional post is Scientific Engineer (SF). Applicant took VRS on personal grounds on 1.3.2012 and Annexure A8 representation was submitted one year after VRS. Accepting four promotions without raising any issue has estopped him from raising a grievance about the fourth or fifth promotion at this belated stage, that too one year after retirement, respondents argue. Entire DPC proceedings were completed in March 2009 Applicant rejoined duty on 20.4.2009 after DPC proceedings were over. Annexure A10, A11, A12 and A13 judgments relied upon in the OA by the applicant have no relevance to the facts of the present case, argue the respondents.

6. The main contention advanced by the respondents is that the applicant had submitted a request for voluntary retirement from service on 19.1.2009. Since the application for voluntary retirement was under process, his case for



promotion was not considered for review as on 1.7.2009 along with others. During the notice period for voluntary retirement, the applicant was on medical leave. Therefore the leave sanctioning authority sent the applicant for a second medical opinion before considering his request to withdraw the voluntary retirement. This was done as VR was sought on medical ground. Subsequently competent authority had approved for withdrawal of the VR application. On expiry of leave, the applicant reported back for duty on 20.4.2009 by which time the formalities for DPC were over.

7. OA is filed praying to antedate applicant's promotion to the post of Scientist/Engineer-SE which was granted to him w.e.f. 1.7.2003 and also challenging his non promotion to the post of Scientist/Engineer-SF from the year 2007 onwards. As per rule, an OA has to be filed within one year from the date on which the order has been made by the Department. Where an appeal/representation has been submitted to the Department, and the authority competent to pass final orders has not passed the said order, OA has to be filed after the expiry of the period of six months from the submission of such representation and within one year from the date of expiry of the said period of six months. In the instant case, the applicant has not complied with the time stipulation and the respondent argues that the OA is time barred and not meeting the limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985 as the cause of action in this case had arisen way back in 2003. The representations submitted by the applicant prior to filing of the OA with the intention of keeping his claim live, cannot



revive the cause of action in this case as per the dictum in C.Jacob Vs. Director of Geology and Mining and another [2008 (10) SCC 115].

8. Promotion system for Scientific and Technical officials in ISRO/DOS is purely merit oriented and not based on seniority. Flexible Complementing Scheme (FCS) [since renamed as Merit Promotion Scheme], is a time bound, merit based and non-vacancy oriented scheme of promotion for the Scientific & Technical personnel at all levels in the defined hierarchy for each category from the year 1976. It is a time tested promotion scheme since inception of ISRO. Being a purely merit oriented promotion system, the DPC considers each case with respect to the performance, work output, efficiency, ACR/APR grading of the officials. Completing the prescribed residency period for promotion to the next higher grade alone will not confer any right to promotion.

9. The review for promotion of Scientific/Technical personnel is conducted twice a year, on 1st January and 1st July every year. The DPC review procedure consists of screening and interview. The Screening Committee categorizes the persons as those 'screened in' i.e., those who could be considered by the Selection Committee, and those "screened out", i.e., not recommended by the committee for being considered further. In exceptional cases, the committee find that a person may not be 'screened in' on the rationalized date but could be considered for screening as on the next rationalized date i.e, after 6 months instead of waiting for one year. In such cases, the committee will recommend the case as re-look after six months.



10. The applicant has earned all the promotions in his career duly enjoying the benefits of merit promotion scheme. If a junior is more meritorious, he may get promotion on merit prior to the seniors. When candidates are considered for promotion to the next higher grade, all the details viz., bio-data of the employee together with work report/recommendation showing the correct discipline/area of specialization of the candidate called for interview is being made available to the DPC. DPC will also have an expert in the area of specialization of the candidate concerned while the candidate is being assessed for grant of promotion. Non-mentioning of the area of specialization in the service book never prejudiced the applicant. Even if the area of specialization is mentioned in the service book, it is not a document placed before the DPC.

11. The applicant is a graduate in Civil Engineering. In order to extend him opportunities to widen his scope of work and explore his potential, he was assigned with the functional designation as Section Head (Contracts) during 2008 in the C.M.G. Group. The ACRs are written based on the performance of the employees during the assessment period (calendar year wise), and as such the performance of the employees during previous years or the gradings awarded to the employees during previous years will never be a matter for consideration, while writing ACRs. Therefore, the applicant cannot make a claim that he is entitled to be awarded the ACR gradings commensurate with the gradings awarded to him in previous years. As per GOI guidelines on ACR, adverse remarks, if any, recorded in ACR only were



required to be communicated to the individual and not the below benchmark grading. As per ACR norms, below average grading only will be treated as adverse entry, which is required to be communicated. In the instant case, the applicant was never awarded such a grading. Hence the question of communicating the entries did not arise, argue the respondents. Accepting the grading allotted in the APA without any protest is an indication that the applicant considered the same as being in accordance with the performance rendered by him during the period. The contention of the applicant that the technical report published by him in the year 1996 was not considered by the DPC is also contested by the respondents. Though the publication was made in 1996, the applicant had projected the publication in the work reports attached to the ACR from 1996 to 2002, though technical papers published during the period of consideration is taken into account by the Screening Committee.

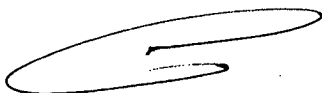
12. Applicant's prayer is for antedating his promotion to Engineer SE and grant of promotion to higher post of Engineer SF. The applicant is covered by the merit promotion scheme wherein promotion is given on merit based on performance, work output, efficiency, ACR/APAR grading, outstanding contribution etc. Hence APR grading alone is not the criteria considered for MPS promotion to the next higher grade. Hence any candidate can be screened out if he fails to meet the benchmark in all the elements of MPS Scheme. Whereas MPS promotions are given on completing fixed years of service, it is given only when all above conditions are fulfilled and no right



accrues to applicant merely on completing qualifying years of service.

13. We have heard the learned counsel on both sides and perused the written arguments.

14. On a reading of the entire material placed before us, it is revealed that the applicant's grievance is for ante-dating his Engineer SE promotion and non-consideration in the review DPC as on 1.7.2009. In the rejoinder also, the applicant has underlined this fact by stating that his case for review DPC as on 1.7.2009 was not taken up for processing by respondents even after joining duty on 20.4.2009. It is seen that the OA was filed on 2nd July 2013. The applicant took voluntary retirement on 1.3.2012. A detailed representation dated 4.3.2013 made by the applicant after retirement is seen marked as Annexure A8. Applicant did not represent his grievance before appropriate authority prior to his retirement or immediately after he was promoted as Engineer SE or after the promotion to SF Grade was made. Learned counsel for the respondents argued that the promotion scheme prevalent in the Department is purely merit oriented based on performance, work output, efficiency and ACR/APAR grading. It is further contended that from 2009 onwards, ACR was replaced by APAR (Annual Performance Appraisal Report). Respondent argues that if the applicant did not agree or had a grievance with the grading awarded to him, he should have represented to the appellate authority against the APAR grading within 15 days of the receipt of the copy of APAR. The applicant had accepted the APAR without any demur did not prefer to submit an appeal, and without contesting the



same at the appropriate time before the appropriate authority, is bringing up the matter at this late date. It is not as if the APAR was the assessment of Reporting Officer only. It has been agreed to by the Reviewing and Countersigning authority. Besides APAR the applicant was required to meet the required benchmark in other elements of review.

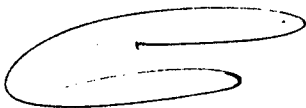
15. The applicant was entrusted with the duties in accordance with his expertise in computerized budget operations and he was monitoring the budget proposals of Civil Engineering Department (CED)/VSSC. Later, he was also entrusted with the responsibility of budget and documentation in CED/VSSC. The fact that "computerization" was not found a mention in the Service Book of the applicant had no impact at all in the process of his consideration for promotion. Apart from the grading in ACR/APAR report, the Screening Committee considers various other aspects before arriving at a definite conclusion whether the official is fit for promotion or not.

16. According to the respondents, the applicant's request for voluntary retirement which was submitted on 19.1.2009 was pending for approval and that was the reason for not taking up case for consideration in the review DPC held on 1.7.2009. We find this a plausible reason for non-consideration. Hence applicant missed the bus due to his own action. Another reason cited by the respondents is that the applicant did not meet the required attributes for promotion which was not only APAR based performance and besides was also assessed on the basis of work output, professional ability, leadership quality, discipline, organizing ability, publication of technical paper and



conduct. Below bench mark grading recorded in ACR/APAR during the relevant period is also cited as one of the reasons for the non-grant of promotion.

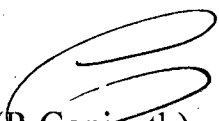
17. Vide Annexure A2 produced by the applicant he was appointed as Engineer SB (computerization) in the Civil Engineering Division. Vide Annexure A3 appointment letter produced applicant was appointed as Engineer SB (Computerization) in the Civil Engineering Division. Hence it is apparent that applicant's appointment is in the Civil Engineering Division, and therein he can be assigned to work at any desk in the designated pay scale. And whereas specialization in a particular field i.e., Computerization is acknowledged, his basic selection in the Civil Engineering Division cannot be overlooked or bypassed. In Annexure A7 applicant is designated as in-charge Budget and Documentation Cell in the Civil Maintenance Group. Applicant's computerization experience was being utilized in the Civil Engineering Division. But this does not absolve him of the fact that he has been recruited to the Civil Engineering Division and applicant cannot seek a change from the original department to which he was selected, unless he was selected to another department by following the appointment procedure. Applicant was handling Budget and Documentation Cell as per Annexure A7 produced. May be, this work was computerized, but this would not make the applicant who was a Civil Engineer equivalent to a B.Tech in Computer Engineering. As all departments of Govt of India were being computerized, applicant would have also participated and effected the computerization of




the Civil Engineering Department in VSSC.

18. The Screening Committee had before it the work report and APR, and all aspects of applicant's work which were required to be covered for assessment by it. Applicant also makes allegations against the reporting officer who has not been impleaded in the OA as a necessary party. The applicant was communicated of his APAR grading. He did not make any representation within the time schedule provided. Hence he cannot now say that injustice was done. This is not a case where opportunity was not afforded to the applicant. But it is a case where applicant failed to use the opportunity afforded at the appropriate time and in the manner prescribed ~~afforded~~ under the APAR rules.

19. In the aforesaid background, the OA is both time barred and devoid of merit. Accordingly, OA is dismissed.


(P. Gopinath)
Administrative Member

aa.


(N.K. Balakrishnan)
Judicial Member