

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Reserved on 09.07.2014

Pronounced on 24.07.2014.

Original Application No.504/2006

Hon'ble Mr. Navneet Kumar, Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

Raj Kumar Kanojia aged about 47 years S/o Sri Mannu
Lal R/o 6/922, Vikas Nagar, Lucknow.

-Applicant.

By Advocate: Sri A. Moin.

Versus.

1. Council of Scientific Industrial Research, Rafi Marg, New Delhi, through its Director General.
2. Industrial Toxicology Research Center, Lucknow through its Director now Indian Institute & Toxicology Research.

-Respondents

By Advocate: Sri Pankaj Awasthi for Sri A.K. Chaturvedi.

ORDER

By Ms. Jayati Chandra, Member (A).

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, 1985 seeking the following relief(s):-

- (a) to quash the impugned orders dated 28.8.2006 and 19.04.2006 as passed by the Respondent No.2 contained in Annexure A-1 and A-2 to the O.A.
- (b). to quash part of the order dated 26.12.2005 passed by Respondent No.2 as contained in Annexure A-3 to the O.A. so far as it provides that the applicant shall be placed in Group III (3) in pay scale of Rs. 6500-

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10500/- w.e.f. from the date of taking over the charge.

- (c). to direct the respondents to place the applicant in Group III (1) w.e.f. 01.04.1988, Group III (2) with effect from 1.4.1993 Group III (3) w.e.f. 1.4.1998 and Group III (4) w.e.f. from 1.4.2003 with all consequential benefits.
- (d). to direct the respondents to pay the cost of this application.
- (e). any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed."

2. The facts of the case as averred by the applicant are that he was promoted as a Senior Technician in November, 1985 and in May 1994 as Junior Technical Assistant. He had passed B.Sc. examination in 1986, M.Sc. in 1990 and been awarded Ph.D. degree in 1999 all during the course of his service with the ITRC. The CSIR and ITRC introduced a promotion scheme call MANAS on 12.09.1990 but with retrospective effect i.e. from 01.04.1988. He was eligible to be promoted to the level of Group III (1) as a one time measure on 1.4.1988 and to the second higher level of Group (III) (2) w.e.f. 01.04.1993. He made a representation to the Director ITRC, Lucknow seeking for special interview for considering him for promotion to the post of Technical Officer, which was a reserved post and had been lying vacant. By letter dated 17.8.1993, the respondents sought a clarification from the applicant regarding the scheme under which he wished to be assessed i.e. para 6.4.7 of (MANAS) or under CSIR 'Circular' No.17 (65)/-42-90-PPS (PTII) dated 6.11.1990 (Annexure-5). The applicant gave his option for being considered under provision as laid in para 6.4.7 of MANAS as he has completed his B.Sc. degree in 1986, which is the entry

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level qualification for Group III. It is pertinent to mention here that the aforesaid post had been advertised vide advertisement No.2/93 dated 3.12.1993. He was called for a special interview in terms of the provisions of MANAS but he was not promoted while his colleague namely Mohd. Ashquin, Kailash Chandra and Kewal Lal were promoted as Group III (4) Technical Officer 'C'. Thereafter, the applicant was informed vide order dated 4.5.1994 that no benefit could be extended to the applicant unless MANAS was extended beyond 01.04.1993 (Annexure-6). The CSIR introduced a new Assessment Scheme known as "Revised MANAS" w.e.f. 31.8.1994 but it was to be implemented retrospectively w.e.f. 01.04.1992 (Annexure-7). Thereafter, by a notice dated 10.11.1994, applications were invited from staff members, who were in position on 01.02.1981 and acquired an entry level qualification for the Group post higher to the one in which they were placed on/or after 31.12.1981 (Annexure A-8). The applicant made his application on 25.11.1994 (Annexure A-9). Thereafter, by means of order dated 25.1.1996, the applicant was informed that he is being considered for promotion to the next higher grade as he did not have the required percentage of marks in Graduate and Post Graduate Examinations. The applicant filed O.A.No.57/1997 in which by an order dated 12.01.2005 the following direction were given:-

"Having gone through the record and hearing counsel for the parties, we are of the considered opinion that the applicant should have been considered in accordance with the provision of para 6.4.7 of the MANAS, in case he is otherwise eligible for consideration under the scheme. Office Memo dated 25.1.96 would not come in the way for consideration.

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Accordingly, respondents are directed to consider the case of the applicant in accordance with para 6.4.7 of the MANAS for promotion to the higher group within a period of three months from the date of receipt of copy of this order.

OA is partly allowed without any order as to costs."

3. Aggrieved against the same, the respondents preferred Writ Petition No.693(SB) of 2005, which was dismissed by judgment and order dated 02.05.2005 (Annexure-11). In compliance of the order of Hon'ble High Court by which the order of the Tribunal was upheld, the respondents have passed an order dated 26.12.2005 by which the applicant was placed in Group III (3) in the scale of Rs.6500-10500 to be made effective from the date of taking over the charge of the said post (Annexure-3). The applicant while making out his case has also stated that by an order dated 6.10.1987 Disciplinary Proceedings under Rule 14 of CCS (CCA) Rules, 1965 were initiated against him. He was imposed the penalty of dismissal from service by an order dated 17.10.1988 and the order was modified by Appellate Authority to that of minor penalty. Subsequently, by an order dated 15.11.1990 he was allowed full salary and allowances for the period of his dismissal. The respondents by not granting him promotion w.e.f 01.04.1988 have erred on two counts (a) he did not have to apply against an advertised post for consideration under para 6.4.7 of MANAS, and (b). as the applicant was under no penalty on the due date i.e. 01.04.1988 therefore his case for selection to the higher post was justified. He made representation against the impugned order (Annexure-3) dated 26.12.2005. The representation of the applicant was rejected on 19.4.2006 (Annexure A-2). The applicant

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also submitted a detailed representation on 9.6.2006, which was rejected by means of order dated 28.8.1996 (Annexure A-1). Hence this present OA.

4. The respondents have filed their Counter Affidavit and contested the claim of the applicant. It is stated that's the applicant was suspended by order dated 28.09.1987 (Annexure C-2) charge sheeted on 6.10.1987 (Annexure C-1). An enquiry was initiated against him and the inquiry report was submitted on 4.8.1988. The Disciplinary Authority dismissed the applicant from service by an order dated 17.10.1988 (Annexure C-3). The Appellate Authority by his order on 08.05.1989 (Annexure C-4) modified the penalty of dismissal to withholding of promotion for the period of 5 years from the date of the order. The period of suspension of dismissal i.e. from 17.10.1988 to the date of reinstatement was treated as Dies-non. Against this order the applicant gave a review petition that Revisional Authority by its order dated 15.11.1990 (Annexure C-5) modified the order of the Appellate Authority to payment of full salary and allowances for the period from 17.10.1988 to the date of reinstatement. However, the period of unauthorized absence from the date of release from ITRC to the date of suspension may be treated as 'Non duty'. But, the orders of withholding of promotion for 5 years were not interfered with. After expiry of punishment period of 5 years on 08.05.1994, the applicant was assessed and was promoted to Group II (3), by an order dated 12.05.1994 (Annexure C-6). The applicant filed O.A.No.57/1997 before this Tribunal, praying therein the following relief(s):-

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“(A) To issue a writ, direction or order commanding the respondents to consider the applicant to the next higher group namely group III under the provision MANAS case contained in para 4.6 of this application with effect from the date of which his colleagues namely Shri Mohd. Askin, Shri Kewal Lal and Shri Kailash Chandra were promoted and to promote him with effect from the said date.”

5. During the pendency of this OA the applicant was considered for promotion to Group II (4) w.e.f. 26.5.2001 (Annexure C-07) after the conclusion of the legal procedure between the parties and OA and subsequent writ petition, the applicant as per judgment an order of Hon'ble High Court date 5.2.2005 (Annexure A-11) the applicant was considered by the Assessment Committee under para 6.4.7 of MANAS Scheme, who made his recommendations for the placement of the applicant in Group (III) (3) w.e.f. the date of taking over the charge by O.M. dated 26.12.2005 (Annexure A-3). The applicant took charge of the post of Group (III) (3) on 26.12.2005 without any protest. Copy of the charge certificate dated 26.12.2005 is annexed at (Annexure C-8) and his promotion notified by O.M. dated 6.2.2006 (Annexure C-9). The applicant preferred a representation dated 10.02.2006 (Annexure A-12) for his placement in Group III (1) w.e.f. 1.4.1988, Group-III (2) w.e.f. 1.4.1993, Group III (3) w.e.f. 1.4.1998 and Group III (4) w.e.f. 01.04.2003. His representation was considered and was rejected for the reasons shown in O.M. dated 19.4.2006 (Annexure A-2). He preferred the first representation, which was rejected by the competent authority by an order dated 09.06.2006 (Annexure A-13). He was accordingly informed through the O.M. dated 28.8.2006.

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6. The applicant has filed his Rejoinder Affidavit stating more or less same things as earlier stated by him in his OA.

7. During the course of hearing the applicant has placed reliance on the judgment of **O.A.No.504/2006 Puttti Lal Gupta vs. Union of Indian & Others reported in 2005 (2) A.T.J. page-228** in which it has been held that major penalty subsequently converted into a minor penalty should have no impact on the promotion of a person.

8. We have heard the learned counsel for both the parties and perused the entire material available on record.

9. The basic issue in this case is the consideration of the applicant for promotion under the MANAS, 1990 Scheme in reference to Para 6.4.7 of the said scheme. The order passed by this Tribunal in O.A.No.57/1997 and by the Hon'ble High Court in Writ Petition No.693(SB) of 2005 had directed to the respondents to make their statement that the applicant should have been considered in pursuance of Para 6.4.7 of MANAS in case he is otherwise eligible under the scheme and OM dated 25.1.1996 will not come in the way of consideration. The said para-6.4.7 reads as follows:-

"6.4.7-There is no movement from one group to another. For vacant positions to be filled up-whether at entry or lateral entry levels (wherever permissible)-- Officer who were in position on 1.2.1981 and acquired qualifications of next higher group after 31.12.1981

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could be considered alongwith others who apply against advertised posts. Any of the departmental employee (s) if selected, be appointed by being allowed to carry his/their post (s) over and above the number of outside candidates selected against the posts advertised. Wherever posts are not advertised, in a particular year, or if advertised do not cover the specialisation of any particular Scientist/Technologist of above category, special interviews may be arranged for them only as a One time measure. Their selections will be on acquiring a comparable level expected in open recruitment to such positions."

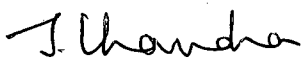
10. During the course of hearing the learned counsel for the respondents while arguing on the entire body of discussions has drawn our attention to para 6.4.11 of the same scheme. The said para reads as follows:-

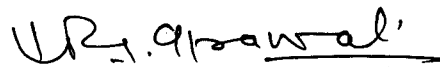
"6.4.11-Assesement of scientific and technical employees is affective from due dates. However, if on the date of meting of assessment committee an employee is (a) under suspension; (b) against whom disciplinary proceedings are pending; (c) a decision has been taken by the disciplinary authority to initiate disciplinary proceedings against him ; or (d) against whom prosecution has been launched / sanctioned, the findings of the assessment committee may be kept in sealed cover irrespective of the fact that the assessment is due from the date when none of these contingencies was in existence. If the officer is exonerated or suspension is held unjustified, recommendations in the sealed cover be acted upon. and the employee allowed the benefit of assessment from the due date. In case disciplinary proceedings/court cases result in imposition of any of the minor/major penalties under Rule 11 of CCS (CCA) Rules, the effective date of assessment will be from the date immediately after the completion of the period of penalty. If the minor penalty of 'censure' or 'recovery' form pay of the whole or part of any pecuniary loss caused to the Council by negligence or breach of order' is imposed, the due date of assessment will be immediately after the issue of the order imposing any of these penalties. However, where the employee is neither completely exonerated nor the disciplinary proceedings result in imposition of any of the recognized penalty, the recommendations in the sealed cover may be placed before the same Assessment Committee for deciding on whether the sealed cover is to be opened and, if so, deciding the due date of his assessment."

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11. The MANAS Scheme was notified on 12.09.1990 but the due dated was 01.04.1988 when the applicant was first suspended and then out of service from 17.10.1988 till reinstated in service by order dated 08.05.1989 with the penalty of postponement of promotion by five years. His case was finally settled in so far as payment of salary etc. to e paid on 15.11.1990.

12. As per the underlined portion of para 6.4.11, promotion to the applicant could be considered only after the currency of the penalty was over. The case cited by the applicant does not come to his assistance as the facts are different. In the case of the applicant, there is a specific penalty of withholding of promotion. Therefore, the OA is liable to be dismissed and is accordingly dismissed. No order as to costs.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

Amit/-