

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Reserved on 09.07.2014

Pronounced on 6th August 2014

Original Application No.358/2007

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

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

Dr. V.S. Kumar, aged about 56 years son of Late Dr. V.K. Mohand Rao, resident of SE-8, Sector 'M' Aliganj, Kursi Road, Lucknow [working Scientist Group IV (3) in Central Institute of Medicinal and Aromatic Plants (CIMAP), Lucknow].

-Applicant.

By Advocate: Sri Prashant Kumar Singh.

Versus.

1. Council of Scientific and Industrial Research, Anusandhan Bhawan, Rafi Marg, New Delhi, through its Director General.
2. Director General, Council of Scientific and Industrial Research, Anusandhan Bhawan, Rafi Marg, New Delhi.
3. Central Institute of Medicinal and Aromatic Plants (CIMAP), Lucknow, through its Director.
4. Director, Central Institute of Medicinal and Aromatic Plants (CIMAP), Lucknow.

-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):-

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- (a) *issuing/passing of an order or direction to the respondents setting aside/quashing the remarks that the assessment committee has found him "not fit for promotion" in the interview held on 13.10.2003, 03.03.2005, 26.04.2006 and 24.01.2007 for promotion from Group IV (3) (pay scale Rs.12,000-375-16,500) to Group IV (4) (pay scale Rs.14,300-400-18,300) with effect from 05.10.2002, 05.10.2003 and 05.10.2004, respectively, as communicated to the applicant through the Office Memorandum, including the Office dated 29.05.2006 and 13.02.2007 (as contained in Annexure Nos.A-1 and A-2 to this application), after summoning the original from the respondents.*
- (b). *issuing/passing of an order or direction to the respondent Nos.1 and 2 to hold a review meeting of the Recruitment Assessment Board to re-consider the case of the applicant for promotion from Group IV (3) pay scale Rs.12,000-375-16,500) to Group IV (4) (pay scale Rs.14,300-400-18,300) with effect from 05.10.2002, 05.10.2003 and 05.10.2004, respectively, ignoring the impugned marks awarded below threshold marks, within a period of two months and to pass the appropriate promotion order within further period of 15 days.*
- (c). *issuing/passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- (d). *allowing this Original Application with costs."*

2. The facts of the case as averred by the applicant are that the applicant was initially appointed as Scientist 'B' Group IV (1) at the Central Institute of Medicinal and Aromatic Plants (CIMAP), Lucknow on 05.10.1987 as per the recruitment and promotion rules of CIMAP. He was promoted as Scientist Group 4 (2) after 5 years of service on 05.10.1992 and as Scientist Group IV (3) on 05.10.1997. He became entitled for promotion to Scientist Group IV (4) after four years of service on the basis of merits on 05.10.2001. He had appeared before the Assessment Committee on 13.09.2003 after completion of all the formalities but he was not granted the said promotion on the ground that Assessment

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Committee found him “not fit for promotion”. The copy of said communication is not available with the applicant. He was due for regular promotion as Scientist Group IV (4) on 05.10.2002. After completion of all the due formalities he appeared before the Assessment Committee on 03.03.2005 but again he was not granted the promotion and he was assessed “not yet fit for promotion”. The applicant was due for second assessment committee for promotion as Scientist Group IV (4) w.e.f. 05.10.2003. Once again he appeared before the Assessment Committee after completion of all the formalities on 26.4.2006 and again he was not found fit for promotion. The copy of the recommendation of Assessment Committee dated 29.05.2006 was communicated to him. It is seen from the communication that no reasons for declaring him unfit has been given in the same (Annexure 1). The applicant was due for third assessment for promotion as Scientist Group IV (4) w.e.f. 05.10.2004. He appeared before the Assessment Committee on 24.01.2007 after completion of due formalities but he was not given promotion. The decision of the Assessment Committee was communicated to the applicant vide letter dated 13.02.2007. By Memorandum dated 03.04.2007, the applicant was communicated the contents of paragraph 5.4 of the Annual Review of Performance (ARP) for the period from 01.04.2003 to 31.03.2004, 01.04.2004 to 31.03.2005 and 01.04.2005 to 31.03.2006 (Annexure Nos.A-18, A-19 and A-20) respectively. It is seen from the communication of these ACRs that he is required to improve in the areas of career growth planning, focus on using advance IT tools for publication and documentation work of institute and develop project for institute’s

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publications digitization and also independent project development as team leader (Documentation of MAPs). As the applicant was never informed about these alleged weaknesses, he could neither represent against them nor taken an appropriate action against the same. The **Hon'ble Apex Court in the case of Gurdial Singh Fijji vs. The State of Punjab and Others** , reported in 1979 (1) SLR 804 and the decisions of the **Mumbai Bench of this Tribunal rendered in the cases of Charan Singh Azad Vs. State of Maharashtra and Others**, reported in 2001 (1) All India Service Law Journal Page-97 and **Ram Babu Vs. Union of India and Other** reported in 2001 (2) All India Service Law Journal page-9 have held that "un-favourable or adverse remarks or grading cannot be looked into unless the same has been communicated to the employee concerned and he is afforded an opportunity of making a representation against the un-favourable remarks or grading below benchmark". He had learnt through the mechanism of RTI that the Assessment Committee awarded him following marks:-

Date of Interview	Assessment Year	Threshold	Awarded
13.10.2003	2001-02	85	80
03.03.2005	2002-03	80	70
26.04.2006	2003-04	75	65.83
24.01.2007	2004-05	70	65

3. A comparison of the threshold marks and marks awarded to him shows that there is a calculated attempt to keep him marginally below the bench mark. The applicant submitted an application dated 10.05.2007 to the Respondent No.2 and requested for review of the

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decision of Assessment Committee meeting dated 03.03.2005, 26.4.2006 and 24.01.2007 (Annexure-26). But, as no decision was taken the applicant was forced to move the present OA.

4. The basic ground for making this prayer of quashing the decision of the Assessment Committee is that the marks awarded to him were based on ACRs which were not communicated to him till after the meetings of the Assessment Committee.

5. The respondents have filed their reply firstly raising the technical objection on the ground of delay.

6. The Section 21 lays down a period six months from the date of the representation made against any order found to be adverse to the interest of the applicant and thereafter one year for any applicant to move to the Tribunal. The applicant has sought quashing of the recommendations of the Assessment Committee made in the meeting dated 13.10.2003, 3.3.2005 and 25.4.2006. The result of the meetings were communicated to the applicant variously by O.Ms. dated (1). 19.12.2003 (Annexure O-3) (2). 30.03.2005 (Annexure O-6). (3). 29.05.2004 (Annexure-1) respectively. The applicant made no representation against the first 3 O.Ms. hence any relief against them is barred by limitation as laid down under Section 21 of the administrative Tribunal Act, 1985. Further the decision of the last assessment was communicated to him Memorandum dated 13.2.2007 (Annexure A-2) to the OA. The applicant has preferred a representation dated 10.05.2007 against the said O.M. but without waiting for disposal of the

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representation as he is required under Section 21 of the Administrative Tribunal Act, 1985, he has moved to this Tribunal. Thus, the OA is pre-mature in so far as relief against this O.M. is concerned. The other objection is that the OA is not maintainable as the applicant has claimed the plural remedies. The applicant has assailed the decision of four separate committees held on different dated for assessing the suitability of the applicant for promotion to Scientist IV (4).

7. Coming to the merits of the case they have stated that in accordance with Rule 7.5. of CSIR Scientist Recruitment and Assessment promotion Rules, 2001 the applicant a Scientist Group IV (3) was eligible for promotion on the basis of merit as Scientist Group IV (4) w.e.f. 05.10.2001 after completion of a the minimum four years of the residency period from 05.10.1997. The applicant alongwith several others was considered by the internal Screening committee in accordance with the Council of Scientific and Industrial Research Scientist Recruitment and Assessment Promotion Rules, 2001. He was short listed the basis of their suitability and he asked to appear before the Assessment Committee for interview. He was similarly found suitable by the Internal Screening Committee for the regular selection every year in 2002, 2003 and 2004 and appeared before the assessment Committee. In every case the Assessment Committee, which met on 13.10.2003, 3.3.2005, 26.4.2006 and 24.1.2007 found the applicant "not fit for promotion". It is pertinent to mention here that as per the relevant rules of CSIR, Promotion Rules the applicant alongwith other zone wise employees are due for assessment every year and the same was strictly done.

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Further, the applicant was communicated his ACRs for the years 2003-04, 2004-05 and 2005-06 but instead of filing any representation against the communication of ACRs he preferred an application dt.10.05.2007 (Annexure -26 against the decision of the Assessment committee as communicated to him by O.M. dated 13.02.2007 (Annexure A-2) and filed the OA. The respondents have admitted delay in communicating the annual review of performance for the year 2003 to 2004, 2004 -2005 and 2005 -2006. According to them, there is no willful and deliberate intention but it is due to change of guidelines.

8. The applicant has finally been given his promotion as Scientist Group IV (4) by O.M. dated 16.4.2007 (Annexure CR-17).

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

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

11. Before going into the merits of the case, the technical objections raised by the respondents required to be examined. It is seen that by order dated 31.3.2009, the OA was admitted after examining one of the objections i.e. the OA is pre-mature as certain representation was pending for disposal by the respondents. The respondents have raised 2 other

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objections (a). the ground of plural relief's and (b). Limitation.

12. With regard to the number of relief's that may be clearly Rule-10 of Central Administrative Tribunal (Procedure) Rules, 1987 states the following:-

“10. Plural remedies –

An application shall be based upon a single cause of action and may seek one or more relief provided that they are consequential to one another.”

13. The applicant in this case has challenged the outcome of four different meetings held on different date to determine the suitability or otherwise for promotion w.e.f. different dates. The only common factor here is that the promotion is sought on the same post i.e. Scientist Grade IV (4). The details of the releifs sought are given below:-

Sl.No.	Date of promotion	Date of meeting by Assessment Committee	Outcome communicated to applicant
1	05.10.2001	13.09.2003	19.12.2003 (0-3)
2	05.10.2002	03.03.2005	30.03.2005 (0-6)
3	05.10.2003	26.04.2006	29.05.2006 (A-1)
4.	05.10.2004	24.01.2006	13.02.2007 (A-2)

14. In terms of Rule-10 of Central Administrative Tribunal (Procedure) Rules, 1987 this would appear to be plural relief's. However, after nearly 7 years of judicial proceedings, the OA cannot be dismissed merely on this ground alone.

15. We come next to the question of limitation. Section 21 of the Administrative Tribunal Act, 1985, which is as follows:-

“21. Limitation.—

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- (1) A Tribunal shall not admit an application,—
- (a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
- (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.
- (2) Notwithstanding anything contained in sub-section (1), where—
- (a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and
- (b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.
- (3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.”]

16. It is seen from the table above that the applicant was made aware of the outcomes for the first 3 meetings variously by letter dated 19.12.2003, 30.03.2005 and 29.05.2006. This OA has been filed on 24.08.2007 without any delay condonation prayer. In fact every time the applicant had chosen to abide by the decision of the respondents and await his turn for promotion in the subsequent year. The Hon'ble Supreme Court in the case ***Administrator of Union Territory of Daman and Diu and others vs. R.D. Valand 1995 (Supp) (4) SCC-593*** held as under:-

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“.....The Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondents has been making representations from time to time and as such the limitation would not come in his way.”

17. In *Union of India & Others Vs. A. Durairaj -JT 2011 (3) SC-254* the Hon'ble Supreme Court has held as follows:-

“It is well settled that anyone who feels aggrieved by non-promotion or non-selection should approach the Court/Tribunal as early as possible. If a person having a justifiable grievance allows the matter to become stale and approaches the Court/Tribunal belatedly, grant of any relief on the basis of such belated application would lead to serious administrative complications to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions which has been granted to others over the years.....”
.....Therefore, even if no period of limitation is prescribed, any belated challenge would ground of delay and laches.”

Hence, prayer against the outcome of the meetings to determine promotion for the 05.10.2001, 05.10.2002 and 05.10.2003 are liable to be dismissed on the ground of limitation and laches.

18. Coming to the merits of the case the *Hon'ble Supreme Court in Indian Airlines Corporation vs. Capt. K.C. Shukla 1992 (5) SLR 519* laid down some basic parameters regarding scope of judicial review in the matter of promotion in the following terms

“Adjusting equities in exercise of extraordinary jurisdiction is one thing but assuming the role of selection committee is another. The Court cannot substitute its opinion and devise its own method of evaluating fitness of a candidate for a particular post. Not that it is powerless to do so and in a case where after removing the illegal part it is found that the officer was not; promoted or selected contrary to law it can issue necessary direction. For instance a candidate denied selection because of certain entries in his character roll which either could not be taken into account or had been illegally considered because

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they had been expunged the Court would be within jurisdiction to issue necessary direction. But it would be going too far if the Court itself evaluates fitness or otherwise of a candidate, as in this case.”

19. In view of the caution given with regard to assumption of the role of the Selection Committee, we confine ourselves to examination of what is the impact of delayed communication of the ACRs. The case, the case of the applicant, apart from the assessment of his work and worth as made by the assessment Committee is that this ACSs for the years 2003-04, 2004-05 and 2005-06 were communicated to him vide letter dated 03.04.2007 (Annexure-18-20). This fact has also been admitted by the respondents. However, a juxtaposing of the date of the meeting (as detailed in para-13 above) with the period of the uncommunicated entries would show that the entries for 2004-05, 2005-06 could not have been available before the Assessment Committee in their meeting dated 13.09.2003 & 03.03.2005 as these entries were recorded subsequent to the same. Only the entry for 2003-2004 could have been available.

20. In so far as the entry for 2003-04, 2004-05, 2005-06 is concerned, the Assessment Committee was considering the promotion w.e.f. 05.10.2001, 05.10.2002 and 05.10.2003. Thus, only the performance period prior to those dates would come within the period under review. The applicant has not averred that the Assessment Committee while considering a promotion from a due date, even when meetings are held at a later date, has looked at performance of a later date. Hence, even on merits, the applicant has not be able to establish that the decision of the Assessment Committee meetings

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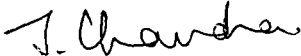
dated 05.10.2001, 05.10.2002 and 05.10.2003 were based on the uncommunicated ACRs.


21. However, the relief with regard to promotion w.e.f 05.10.2004 as per meeting held on 24.01.2007, suffers from no technical defect and is examined on merit. It is admitted by the respondents that ACRs of the years 2003-04, which would fall in the period under consideration was communicated to the applicant only by letter dated 03.04.2007. No doubt the respondents have attempted to defend the issue by saying that the ACRs are the basis on which the Internal Assessment Committee (IAC) does the first level of scrutiny of persons prior referring to them to Assessment Committee. The IAC declared the applicant to be eligible and therefore the un-communicated ACR cannot be held to have influenced the decision of Assessment Committee. In fact this statement does not hold much water as no proceeding of the Assessment Committee has been produced to demonstrate that the ACR had no role to play in the decision of Assessment Committee nor have they produced any copy of any rule to demonstrate its zero effect. We are inclined to place reliance on the various cases quoted by the applicant that no adverse effect can be visited upon a persons when ACRs have not been communicated to him and he has not been given an opportunity of representing against the same.

22. In view of the above, we have no hesitation in remanding back the case for fresh assessment with regard to the suitability of the applicant for promotion as Scientist Group IV (4) w.e.f. 05.10.2004. However, the applicant has retired on reaching the age of

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superannuation. At this stage neither can he make a representation against his belatedly communicated ACRs, if already not made during his service time. Therefore, the case is now remanded to the respondents to make a review assessment of the case of the applicant for promotion as Scientist IV (4) for the year w.e.f. 05.10.2004 within a period of six months on the basis of the average of the rest of the ACRs except the uncommunicated one. In case the applicant is found suitable for promotion to Scientist IV (4) by the review committee he will be given notional promotion w.e.f. the due date i.e. 05.10.2004 within 2 months thereafter and pay fixed accordingly. The pension will also be revised accordingly. The difference so fixed will be paid within three months thereafter. However, in case the review committee does not find him suitable for promotion w.e.f. 05.10.2004 date of actual promotion the above direction will not apply. No order as to costs.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

Amit/-