

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.98/2001

THIS THE 2ND DAY OF MAY, 2002

CORAM: HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT.

HON'BLE SMT. SHANTA SHASTRY.

VICE CHAIRMAN
MEMBER (A)

Dr. Ashok Kumar Gupta,
Aged about 47 years,
B2-J/12 Giriraj Heg. Complex,
Balaji Nagar, CDhinchwad,
Pune, Pin-411 033.

.. Applicant

By Advocate Shri S.S. Karkera.

Versus

1. The Direcetor General,
Indian Council of Medical Research,
Post Box No.4911, Anzari Nagar,
New Delhi-110 029.

2. The Director General,
National Institute of Virology,
20A Dr. Ambedkar Road,
Pune-411 001.

3. The Union of India, through
The Secretary to the
Government of India,
Ministry of Health & Family
Welfare, Nirman Bhavan,
New Delhi-110 011.

... Respondents

By Advocate Shri A.B. Avad

O R D E R (ORAL)
Hon'ble Smt. Shanta Shastri. Member (A)

The applicant in this case is aggrieved that he has not been given promotion under the Five Yearly Asséssment Scheme to the higher grade of deputy Director in the National Institute of Virology, Pune where the applicant is working.

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2. The applicant was initially appointed as Research Officer under Respondent No.2 with effect from 02.02.1981. He was promoted as Senior Research Officer on 01.7.1988. On 30.9.1992 the applicant went on deputation on foreign assignment to Libya as a Micro Biologist initially for a period of two years and the same was extended from time to time upto 31.01.1988. While the applicant was on deputation as per the scheme of 5 yearly assessment for the scientists coming under the ICMR, the respondents assessed the applicant's performance and granted him promotion to the post of Assistant Director with effect from 01.7.1992. The applicant returned from deputation on 19.01.1998. He became due for second promotion to the post of Deputy Director under the 5 yearly assessment scheme. Applications had been invited on 14.5.1999. The applicant submitted his details and a personal interview was held on 12.5.2000. The applicant was not promoted, His case was rejected on 19/28.6.2000. The applicant preferred a representation on 18.7.2000 followed up with reminder to review his case, the same was rejected on 17.8.2000. Being aggrieved, the applicant has approached this Tribunal.

3. It is the contention of the applicant that the respondents failed to follow the proper procedure as laid down in the five yearly assessment scheme. His case was not recommended because of the biased mind.

Further, the applicant's deputation to Libya was treated as Extra Ordinary leave (EOL for short). According to the scheme all periods of leave including the EOL are to be ^{included} in the period of five years to be assessed. However, the respondents, according to the applicant, have treated this period as EOL and might have rejected his case for that reason. Further, the applicant submits that one Dr. Miss. Dayaraaj who was also unauthorisedly absent for a period from September, 1990 to September, 1998 and was at New York was granted promotion as Senior Research Officer under the 5 yearly assessment scheme. Thus, the respondents have discriminated by rejecting the applicant's case for promotion for the post of Deputy Director. The learned counsel for the applicant contends that the applicant's record has been very good. There have been no adverse entries in his ACR, he has published 47 research papers and has published further papers on his return from deputation from abroad. He has even performed very well in the interview by replying to all the questions satisfactorily. According to him therefore, he ought to have been promoted.

4. The learned counsel for the respondents explained the 5 yearly assessment scheme and pointed out that the applicant was duly considered by the selection committee for promotion to the post of Deputy Director under the 5 yearly assessment scheme as per the

procedure laid down. But the applicant himself has to fill up the proforma giving details about his work and performance. The Director of the Institute gives his recommendation thereafter. With all the details of the bio-data and the work done by the applicant, the matter was placed before the selection committee. The applicant was also duly interviewed. After following the proper procedure the committee did not consider it fit to recommend the applicant for promotion under the 5 yearly assessment scheme. The learned counsel for the respondents also refuted the points raised by the applicant about keeping the 5 yearly assessment scheme as confidential. It is not that the applicant was not aware of the details of the scheme as he had already been assessed once for promotion to the post of Assistant Director under the very scheme in 1993. He cannot therefore, claim ignorance about the scheme. As regards EOL it does not appear to be a ground for rejecting the applicant's claim for promotion to the post of Deputy Director as, as per rules of the scheme the applicant's name was included in the list of eligible candidate and he was considered.

5. We have heard the learned counsel for both the parties and have given our careful consideration to the rival contentions. We considered it crucial to see the record and the proceedings of the selection committee. Accordingly, the record was produced by the learned

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counsel for the respondents. We have perused the records. We find that the procedure as prescribed under the scheme dated 23rd March, 1983 has been properly followed step by step. The Director of the Institute, where the applicant is working has given his recommendations. He recommended the case of the applicant. Thereafter, the applicant was interviewed and then the assessment committee of the permanent research cadre of the ICMR met on 12th and 13th May, 2000 and considered all the candidates, who were eligible. In fact, at the beginning of the meeting of the committee itself the Director General of the ICMR explained the scheme and mentioned that the proforma obtained from all the eligible scientists by the year ending 31st December, 1998 were to be considered in depth by the 5 yearly assessment committee supplemented by appraisal of the experts i.e. the subject specialists in different area/fields. All the details of the 5 yearly assessment proforma including the recommendations of the Director, information provided regarding probation and other performance including citations and other evidences year by year and over all assessment by the Director were all taken into consideration. His case was considered on the basis of the proforma bio-data, career information, ACR, for the past 5 years. Thereafter, the Core Committee came to the conclusion that the applicant's case was not a fit case for promotion to the post of Deputy Director. We

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are therefore, satisfied that the respondents have fully followed the procedure laid down. There does not appear to be any malafide or ignoring of any information. In the facts and circumstances of the case, we do not find any merit in the OA. Accordingly, the OA is dismissed, We do not order any costs.

Shanta

(SMT. SHANTA SHASTRY)
MEMBER (A)

B. Dikshit

(BIRENDRA DIKSHIT)
VICE CHAIRMAN

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~~Original/Admission/Disposal of~~
~~to Applicant/Respondent (B)~~
~~on 21/6/12~~

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

REVIEW PETITION NO. 33/2002
IN
ORIGINAL APPLICATION NO. 98/2001

THIS THE 26TH DAY OF AUGUST, 2002

CORAM: HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT. VICE
CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY. MEMBER (A)

Dr. Ashok K. Gupta,
Aged about 48 years, residing
at B2/J/12, Giriraj Housing
Complex, Bijalinagar,
Chinchwad, Pune-411 033.

.. Petitioner

Versus

1. The Secretary to
Government of India,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi-110 011.

2. The Director General
Indian Council of Medical Research,
Ansari Nagar,
New Delhi-110 029.

3. The Director,
National Institute of Virology,
20-A Dr. Ambedkar Road,
Pune-411 001.

.. Respondents

O R D E R

Hon'ble Smt. Shanta Shastri. Member (A)

This review is against the order dated
02.5.2002 in OA No.98/2001. The OA was dismissed. The
relief sought in the OA was to consider him for
promotion to the post of Deputy Director under the Five
Yearly Assessment Scheme.

2. According to the applicant, during the period
from 1997 - 1997 when he was away in Libya on foreign

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assignment he was not given any opportunity to fill up the self appraisal portion of the ACR forms. The respondents were unaware of the work assigned to him abroad and have not supervised his work and therefore, those ACRs are not valid, because they do not reflect the correct position of the work performed. Further, the respondents took no action to obtain assessment reports from the foreign employer to clear his probation period, yet information regarding probation period was taken into consideration, though probation reports were ^{not} ~~were~~ ^{not} written by the foreign employer. Those reports were not properly written and the foreign employer was not competent to write the same. He worked for eleven months during 1993 under the Director i.e. Respondent No.3. Therefore, his recommendation does not reflect the factual position. The review petitioner has also alleged that Shri A.C. Misra who had no citation, had been given promotion, while the applicant had two citation, but was not given promotion.

3. We have perused the grounds taken by the applicant. We had gone through the entire relevant record pertaining to the consideration of the applicant for promotion to the post of Deputy Director. Naturally when the applicant was ~~in~~ abroad his ACR could not have been written. Therefore, report was obtained from the foreign employer in his case. Not only the ACRs were considered, but also the applicant was interviewed and

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it is only thereafter he was not found suitable for promotion. According to us, the applicant is only trying to reargue the matter again on merit. There is no error apparent on the face of the record. Review petition is therefore, rejected.

Shanta S.

(SMT. SHANTA SHASTRY)
MEMBER (AO)

B. Dixit

(BIRENDRA DIKSHIT)
VICE CHAIRMAN

Gajan