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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/00514/2014

Order Reserved on 04.08.2015
Pronounced on 13.8.2015

...

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)**

...

Sunder Lal son of Late Sh. Sohan Singh, aged about 43 years, # 218, Krishna Enclave, PO: Dhakoli, MC Zirakpur, Tehsil Dera Bassi, District SAS Nagar (Punjab).

... Applicant

Versus

1. Central Scientific Instruments Organization, Sector 30, Chandigarh-160030 through its Director.
2. Council of Scientific and Industrial Research, Anusandhan Bhawan, 2 Rafi Marg, New Delhi-110001 through its Director General.

... Respondents

Present: Sh. S.S. Pathania, counsel for the applicant.
None for the respondents.

ORDER

BY HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:

- "8(i) Impugned order Annexure A-11 may be quashed being illegal and its operation be stayed.
 - (ii) The applicant may be ordered to be promoted w.e.f. 19.12.2008.
 - (iii) Relevant provisions of MANAS may be ordered to be amended/elaborated."
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2. Averment has been made in the OA that the applicant is working with respondent no.1 since 1995 and from 19.12.2009 he has been holding post of Executive Engineer (Electrical) which is classified as Group III Grade 5 {Gr.III(5)}. The respondents have the "Merit And Normal Assessment Scheme (MANAS)" for promotion of its employees. Vide clause 2.2.3, a definite criterion is prescribed for promotion for Group III employees from Grade (1) to Grade (7). Under Sub-clause 4 of the Clause 2.3, an employee who acquires entry level qualification of the next Group may be assessed to the next higher Grade in the same Group, two years earlier than the normal prescribed period of assessment, provided he attains the prescribed threshold.

"2.3 Special Provisions:-

2.3.4 Those employees who were in position as on 31.12.1981 (cut-off) date removed vide letter No.17/66/94-PPS dated 24.05.1996), and have acquired entry level qualification of the next Group may be assessed to the next higher Grade in the same Group, two years earlier than the normal prescribed period of assessment, provided they attain the prescribed threshold. If assessee is not recommended for the promotion for the first time, this will be treated as first chance due on completion of five years and he/she will get his/her chance(s) as in subsequent year as per table for Group III. The condition for First Class M Sc/BE as laid down for Group IV will not apply in such assessments. This decision came into force with effect from 25.09.1990. However, scientific and technical employees due for assessment on earlier dates will be allowed notional benefit from the date of assessment with actual monetary benefits w.e.f. 25.09.1990. This benefit will be allowed only under Normal Assessment and not under Merit Assessment.

Such benefit is admissible only to those employees who acquire entry level qualification of next higher Group by

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undergoing the full process of acquiring the relevant higher qualification after joining the CSIR service i.e. taking admission in the course of study after joining with due permission of the competent authority.

In terms of CSIR letter No.17/66/94-PPS dated 28.01.1997, this chance is admissible once in the same Group and will not be adjusted against the chances available for normal assessment under revised MANAS. This modification came into force for assessments falling due in the assessment year 1996-97 onwards."

3. The applicant completed B-Tech (Electrical) in the year 2008 with the prior approval of the competent authority. The applicant became eligible for assessment promotion to Grade 5 in Group III under the provision of Para 2.3.4 of MANAS and accordingly vide Order dated 18.08.2010 was asked to appear for interview before the Assessment Committee on 23.09.2010 (Annexure A-1). The applicant who was interviewed for assessment for promotion from Gr III (4) to Gr III (5) on 23.09.2010 was declared unfit and not recommended for promotion. A copy of the notification dated 27.10.2010 is appended (Annexure A-3). The applicant was declared eligible for a second chance for assessment promotion from Gr III (4) to Gr III (5) vide notifications dated 16.12.2010 and 23.11.2011 (Annexures A-4 and A-5) and was asked to appear before the Assessment Committee on 23.12.2011. Vide notification dated 05.01.2012 (Annexure A-7), the applicant was declared approved for the assessment promotion w.e.f. 19.12.2009 and accordingly disbursed the financial benefits and is being regularly paid. It has also been stated that the impugned Order dated 07.05.2014 vide which the promotion to Gr. III

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(5) granted to the applicant (Annexure A-11) w.e.f. 19.12.2009 was ordered to be cancelled by the respondents. The implementation of the order will amount to recovery of the pay and allowances already paid/disbursed and reduction in future pay and allowances apart from stigma of reversion and that too without any notice or any opportunity of hearing. Aggrieved by this order and the improper actions thus annulling the very spirit of grant of promotion for acquiring higher qualification is defeated, this OA is filed.

4. In the grounds for relief it has, inter alia, been stated as follows:

- i. The applicant acquired the higher qualification of Group IV in 2008 after taking due permission of the competent authority and became due and eligible for assessment promotion w.e.f. 19.12.2008.
- ii. The applicant was assessed by Assessment Committee and was not recommended by awarding 9 marks out of 50 despite having been awarded 44.9 out of 50 in ACRs/APARs and being eligible for relaxation of 10 marks for being of reserved category. The award of 9 out of 50 marks in interview is totally incorrect, improper and whimsical. The award of 9 marks out of 50 is not supported by any reason or the performance actually assessed during the interview or any trade test held. Even if the employee retires or dies in service and is found eligible to be considered for assessment promotion, the criterion for awarding the marks in interview is the average of marks obtained in ACRs/APARs. The criterion for such employees is as under:

0.7 Employees who take voluntary retirement or superannuate or die in service will be considered for assessment from due dates of their eligibility if it falls on an earlier date. For deceased employee there will be no component of interview and marks will be awarded pro rata on the basis of marks

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awarded for ACRs/APARs plus Peer Review, as the case may be.

- iii. A Member termed as 'Expert from Related Area' was not from the related area (Electrical) rather the Member was from Mechanical side. The so-called Expert who is not from the related field is not competent to assess or pass judgment in the unrelated field of his expertise.
- iv. No show cause notice was served or opportunity of hearing given to the applicant before passing the impugned order.
- v. The assessment carried out by the members of the Assessment Committee is improper and not as per the procedure laid down in the MANAS."

Hence this O.A.

5. In the written statement filed on behalf of the respondents preliminary objection has been taken that the OA is barred by limitation in as much as the applicant has sought merit assessment promotion w.e.f. 19.12.2008 for which period he was dully assessed and found unfit on 23.09.2010. The applicant had not submitted any representation in this regard seeking grievance redressal as projected in the OA. It has further been stated that as per proceedings of the Assessment Committee meeting dated 23.09.2010, marks awarded to the applicants in APARs and interview are as per the provisions of revised MANAS and recommendations of the Assessment Committee. It is further stated that Sh. S.K. Mittal, Senior XEN, CEERI, Pilani having specialization in Engineering Services Mechanical and AC, was nominated as an expert member of the Assessment Committee from the related area from the

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Sister Laboratory. A copy of the relevant panel of experts duly approved by the Research Council of CSIR-CSIO is appended (Annexure R-1). In addition to the expert of related area from Sister Laboratory (Sh. S.K. Mittal) mentioned above, there were also three other expert members in the Assessment Committee belonging to Electrical Trade namely Sh. S.K. Girdhar, Principal, SUSPC, Tangori, Sh. Umesh Manderwal, Sr. Manager (E), Bhushan Industries and Sh. S.D. Bhatt, Formal Scientist "G", "IMTECH". As per 4.3 of revised MANAS (Annexure R-2) quorum in respect of the Assessment Committee pertaining to assessment from Group-III(4) to Group-III(5) is Chairman/Alternate Chairman, Director/DG, CSIR or his nominee and atleast one expert in the area wise committee. The proceedings of the assessment Committee dated 23.09.2010 are as per the provisions of the revised MANAS and are in order.

6. Rejoinder has been filed on behalf of the applicant. While reiterating the content of the O.A. it has also been stated that the applicant applied under RTI on 01.11.2010 and requested to reveal the name and designation of the appellate authority and final authority having power to review the decision of the Assessment Committee and even clarification regarding the limitation was sought but in reply it was intimated that there is no appellate authority to review the decision of the such a high powered committee and there is no limit in terms of time as

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per Revised MANAS. Copies of the RTI application dated 01.11.2010 and reply dated 30.11.2010 are appended (Annexure A-12 and A-13 respectively). The respondent originated a letter of rejection for promotion as per the recommendations of the Assessment Committee on 27.10.2010 in the first chance and on 16.12.2010 eligibility for the second chance was declared and then on 23.11.2011 and 13.12.2011, the eligibility was re-declared and finally on 23.12.2011 the applicant was recommended for next higher promotion.

7. When the matter was taken up for arguments on 04.08.2015 none was present on behalf of the respondents, hence Rule 16 of the C.A.T. (Procedure) Rules 1985 was invoked and we proceeded to decide the matter. Learned counsel for the applicant has been heard when he reiterated the content of the O.A. and rejoinder.

8. We have given our careful consideration to the matter. The revised MANAS Scheme has been seen along with copy of CSIR letter No.17/66/94-PPS dated 28.1.1997, which reads as under:

"Sub: Incentive of two years earlier assessment than the normal period of assessment on acquiring qualifications of next group - Modification in para 2.3.4 of revised MANAS.

I am directed to state that the Governing Body at its 142nd meeting held on 28.10.1996 considered the matter regarding incentive of two years earlier assessment than the normal period of assessment on acquiring qualifications of next group under para 2.3.4 of revised MANAS and approved as under :

- (i) "Those employee who have acquired/will acquire entry level qualifications of the next higher Group may be assessed to the

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next higher grade once in the same group two years earlier than the normal prescribed period of assessment.

- (ii) If an assessee is not recommended for promotion he/she will be considered for assessment after completion of residency period prescribed for normal assessment in the revised MANAS as per Table for the relevant Group and the chance of 2 years earlier assessment will not be adjusted against the chances available for normal assessment under revised MANAS.

The benefit of two years earlier assessment, however, will be allowed only under Normal Assessment and not under MERIT assessment."

The above modification in para 2.3.4 of revised MANAS will come into force for assessments falling due in the assessment years 1996-97 onwards. The assessments falling due prior to the assessment year 1996-97 will continue to be regulated as per provision under the existing para 2.3.4 of revised MANAS.

It is requested that the above decision may kindly be brought to the notice of all concerned for information, guidance and necessary action and given wide publicity in the Lab./Instt."

Noting sheet No.CSIO/22(106)2010-11 Rectt. dated 15.04.2014 on which the case of the applicant was examined with reference to para 2.3.4 of revised MANAS has also been seen along with clarification issued by the J.S. (Admn.), CSIR vide letter No.CSIO/22(104)2009-10 R&A dated 16.01.2014. From this material it is clear that only one chance is available to a person for availing the special provision for accelerated promotion on the basis of having acquired higher qualification. The applicant was accorded such consideration in the first round when he was assessed and found unfit on 23.09.2010. Apparently, the applicant accepted this position as he did not submit any representation regarding

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his grievance in this regard and the present OA has been filed 4 years later mainly with reference to order withdrawing promotion on accelerated basis that was allowed to him through assessment on 23.12.2011. Since second chance was not available as per the MANAS, the applicant could only be considered for promotion in the normal course after completing the prescribed residency period of 5 years. Hence there is no irregularity in the impugned order dated 07.05.2014 (Annexure A-11) as this has been passed in accordance with the rules under the revised MANAS. Since revised MANAS is a document in the public domain, the applicant cannot claim that the impugned order has been passed without giving him an opportunity of being heard.

9. It is seen however that the error in considering the applicant for promotion on 23.10.2011 was on the part of the CSIO authorities and the applicant cannot be held responsible for the same. Hence the respondents are directed not to recover the excess pay and allowances released to the applicant on account of the erroneous promotion. No costs.


(RAJWANT SANDHU)
MEMBER (A)


(SANJEEV KAUSHIK)
MEMBER (J)

Place: Chandigarh.
Dated: 13.8.2015

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