

(RESERVED ON 12.04.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This the **26th** day of **APRIL 2018**.

ORIGINAL APPLICATION NO. 79 OF 2017

HON'BLE DR. MURTAZA ALI, MEMBER(J).

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).

1. S.C. Panigrahi, aged about 56 years, S/o Shri Pradumn Panigrahi, Working as Principal Director, Ordnance Factories Institute of Learning, Kanpur, R/o House No. CT-21 Armapore Estate, Armapore, Kanpur-208009 (U.P.).

.....Applicant.

VER S U S

1. Union of India through the Secretary (DP), Ministry of Defence, South Block, New Delhi-110011.
2. Chairman, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi.
3. Establishment Officer, Secretary/A.C.C., Department of Personnel & Training, North Block, New Delhi-110011.
4. Director General, Ordnance Factories, 10-A, Shaheed Khudiram Bose Road, Kolkata-700001.
5. Dr. T.K. Singha, Senior General Manager, Heavy Penetration Projectile Project, Tiruchirapalli.

.....Respondents

Advocate for the Applicant : Ms. Akansha Gaur

Advocate for the Respondents : Shri L.P. Tiwari

ORDER

(Delivered by Hon'ble Mr. Gokul Chandra Pati, Member-A)

The present Original Application (in short OA) has been filed by the applicant under Section-19 of the Administrative Tribunals Act, 1985 seeking the following main reliefs:-

- (a) *To issue a writ, order or direction in the nature of Certiorari, calling for the records and quashing the impugned Minutes of the DPC held on 09.05.2016, promotion order dated 30.09.2016 to the extent it relates to the Respondent No. 5/Dr.*

T.K. Singha as well as the order dated 18.11.2016, passed by the Respondent No.1 rejecting the representation of the petitioner dated 03.10.2016, served upon the petitioner on 15.12.2016 (Annexures-A-1, A-2 & A-3 respectively to Compilation No. 'I' of this petition).

- (b) *To issue a writ, order or direction in the nature of Mandamus directing the respondents to conduct review DPC immediately and to reconsider the case of the petitioner and to promote him on the post of Senior General Manager in Higher Administrative Grade (H.A.G.) in the Pay-scale of Rs. 67000-79000, within a period as may be fixed by this Hon'ble Tribunal.*

2. The facts as stated in the O.A. are that the applicant is an IoFS (Indian Ordnance Factories Service Group 'A') Officer having initially been appointed as Assistant Works Manager with effect from 15.06.1987 in Ordnance Factories Board Organization. The applicant has been working in the capacity of Principal Director, Ordnance Factories Institute of Learning, Kanpur with effect from 04.11.2014. The applicant was due for promotion to the post of Senior Principal Director/Sr. DDG/Senior General Manager in the pay scale of Rs. 67000-79000 which is Higher Administrative Grade (in short HAG). The DPC assembled on 09.05.2016 to consider the selection of Officers for promotion to the post of Senior General Manager against 11 vacancies in General category and made assessment for the year, 2016-17 and found 13 Officers to be "FIT" for promotion out of which four officers were junior to the applicant including the respondent no.5 herein. The DPC formed the panel for the year 2016-17 in which the name of the applicant did not appear in the panel recommended by the DPC for promotion to HAG.

3. Thereafter, the impugned promotion order dated 30.09.2016 (Annexure No. A-2 to the O.A.) was passed by Respondent no. 4 promoting two officers including one junior to the applicant to the post of Senior General Manager in HAG w.e.f., 01.10.2016. The applicant being aggrieved by the promotion order preferred a representation dated 03.10.2016 (Annexure No. A-4 to the O.A.) to the respondent no. 1. When no order was passed on his representation, the applicant filed O.A. No. 1429 of 2016 before this Tribunal and this Tribunal vide order dated 01.12.2016 (Annexure No. A-5 to the O.A.) disposed of the O.A. with the direction to the respondents to decide the representation of the applicant by passing a reasoned and speaking order. In the meantime the order dated 18.11.2016 served through letter dated 15.12.2016 (Annexure No. A-3 to the O.A.) was passed by the respondent no. 1 rejecting the representation dated 03.10.2016 simply by referring the observation made in the APARs of the applicant for the year 2012-13 and 2013-14 by the Reporting/Reviewing/Accepting Authority and considering the same as adverse for which the DPC held the applicant to be "UNFIT". The applicant by way of this O.A. has challenged the DPC minutes dated 09.05.2016 (Annexure No. A-1), promotion order dated 30.09.2016 promoting the officers juniors to the applicant pursuant to the aforesaid recommendations of the DPC as well as the order dated 18.11.2017 (Annexure A-3) rejecting the representation of the applicant.

4. The O.A. has mentioned following main grounds in support of the applicant's grievance:-

- (i) The office memorandum dated 18.02.2008 (Annexure No. A-6) issued by the DoPT it has been contemplated that for promotion to the scale of Rs. 18400-22400 and above, the prescribed benchmark of "Very Good" is to be met in all ACRs of five years under consideration and the DPC was required to make its own assessment on the basis of entries in the ACRs and not be guided by overall grading. In the cases where the assessment of the DPC are apparently not in line with the grading in the ACRs, the DPC should appropriately substantiate its assessment by giving reasons. But the reasons are not recorded by DPC
- (ii) Since, the DPC treated the applicant's A.C.R. as "Good" which is below Benchmark, it should have been communicated to the applicant.
- (iii) As per the letter dated 16.09.2011 issued by the Ordnance Factories Board (Annexure A-13), it has been contemplated that where adverse or below benchmark entries to be recorded in the report of the officer reported upon, it would be appropriate to ensure that the written advice/memorandum are issued during the relevant period to afford him the opportunity to improve and thereafter only such adverse entries are recorded. Observations made in the APARS pertaining to the years, 2012-13 & 2013-14 have been recorded without giving either written advice or memorandum giving the applicant opportunity to improve himself.
- (iv) It was the DPC which had considered it adverse, downgrading the applicant from "Very Good" to "Good" which could not have been done under the law without giving any opportunity of being heard to the applicant.

5. The respondents filed counter affidavit by which it has been stated that the DPC was constituted as per the procedure laid down in the Ministry of Defence Statutory Rules and Orders (SRO) 227 dated 01.10.2002 (Annexure CA-1 to the C.A.). The candidature of the applicant was considered by the DPC headed by Member/UPSC in its meeting held on 09.05.2016 for promotion to the post of Senior General Manager along with eligible officers for the DPC year 2016-17. After thorough evaluation and objective assessment of the officer as reflected in the APARS for the year 2012-13 and 2013-14, the DPC was of the considered opinion that the overall objective assessment of the performance of the officer was not noteworthy to meet the prescribed

bench mark for promotion to the HAG post carrying higher duties and responsibilities. The Committee accordingly assessed the APARs for the said two years as "GOOD" only in terms of Para 6.2 1 (e) of DoPT O.M. dated 10.04.1989. Since, the DPC assessed APARs for the said two years as "GOOD" which was below the bench mark, the applicant was found "UNFIT" by the DPC whereas, his junior Dr. T.K. Singha was found fit for the promotion to the HAG and accordingly the name of Dr. Singha figured in the promotion order dated 30.09.2016. The applicant had filed a representation dated 03.10.2016 against the promotion order which was disposed of by order dated 18.11.2016 issued by Ministry of Defence, which was communicated to the applicant on 15.12.2016. Hence, all the actions taken by the respondents were in conformity with the Rules and instructions of Government in this regard.

6. It has also been stated in the Counter Affidavit that the APARs for the period 2012-13 and 2013-14 were communicated to the applicant with remarks that if he disagrees with any of the comments in the APAR, he can make a representation against the same. However, the applicant did not make any representation on the APAR of 2012-13 and 2013-14, which implies that the applicant had accepted the remarks endorsed in the APARs. The remarks recorded in the APAR of the applicant for the period 01.12.2013 to 31.03.2014 that the "officer is too polite for an industrial set up and needs to be tough" cannot be viewed only as an advisory.

7. The applicant filed rejoinder affidavit with no fresh stand apart from the grounds/points stated in the O.A.

8. At the time of hearing, both the parties were given liberty to file respective written submission. Learned counsel for the applicant filed written submission reiterating the facts stated in the O.A. It was further submitted that the DPC wrongly treated the advisory remarks as adverse entries for the year 2012-13 and 2013-14. The same is advisory as the para 3 (i) of DoPT letter dated 16.09.2011 (Annexure A-13) relating to writing of APAR of IOFS officers, which stipulates that "numerical grading to be commensurate with remarks". It has also been stated that para 3 (v) of the letter dated 16.09.2011 stipulates that before recording an adverse entry a written advice/memo is to be given and then only adverse entry is to be recorded. No such written advice or memo was issued to the applicant before DPC's below benchmark assessment for years 2012-13 and 2013-14. Therefore, the aforesaid "advisory remarks" cannot be treated as "adverse entry" as the same would be violation of para 3 (v) of letter dated 16.09.2011. It has also been stated that as per the DoPT letter dated 08.02.2002 quoted in minutes of the DPC meeting, the DPC can only grade officer "FIT" and "UNFIT". Further, it has been stated that although DPC can make its own assessment as sometimes overall grading in the APAR may be inconsistent with the grading under various parameters or attributes, however, in the present case there was no occasion for the DPC to make its own assessment as overall grading was consistent with grading under individual parameter and attributes. It has further been submitted that since no written advice/memo was

issued to the applicant before writing the remarks as per para 3 (v) of the letter dated 16.09.2011 which is a prerequisite for recording of adverse entry/remarks, therefore, the applicant did not make the representation treating the same as not adverse.

9. We have heard learned counsels for the parties who reiterated their pleadings. Learned counsel for the applicant submitted that it was unfair on the part of the DPC to consider the remarks in the ACR of the applicant as adverse and downgrade the entry to 'Good' which is below the benchmark required to be considered as fit for promotion to HAG. It was further submitted that as per the DoPT OM dated 18.02.2008 (Annexure A-6), the DPC has to record the reasons for assessment which is different from ACR grading and no such reason was recorded by the DPC. It was submitted that the action of the DPC to downgrade the ACR of the applicant for the years 2012-13 and 2013-14 from the overall grading of "Very Good" to "Good" is not as per the existing guidelines of DOPT. Learned counsel for the applicant also filed a copy of the order dated 18.06.2015 passed by Circuit Bench, Nainital of this Tribunal in the case of **Kailash Prasad vs. Union of India and others in OA No. 16/2015** in support of her case.

10. Learned counsel for the respondents submitted that the DPC is competent to assess suitability of the officers for promotion and in this case, the decision has been taken as per the existing instructions of the government.

11. We have considered the submissions of the learned counsels and the material available on record. The impugned minutes of the DPC meeting held on 09.05.2016 held under the Chairmanship of the Member, UPSC have observed the following about the assessment of the applicant:-

"A. The Departmental Promotion Committee were informed by the following provisions contained in the DPC guidelines, circulated by the Department of Personnel & Training, vide their O.M. No. 22011/5/86-Estt (D), dated 10.04.1989 as amended from time to time:-

B. The DPC should not be guided merely by the overall grading, if any, that may be recorded in the CRs but should make its own assessment on the basis of entries in the CRs, because it has been noticed that some times the overall grading in a CR may be inconsistent with the grading under various parameters or attributes."

C. While assessing the APAR for the period 2012-13 in respect of Shri S.C. Panigrahi, the Committee noted that the APAR has been written in two parts. One from 01.04.2012 to 16.11.2012 and other from 21.11.2012 to 31.03.2013. It has been certified by the Department that the APARs have been communicated to the concerned officer in terms of DoP&T OM dated 14.05.2009.

In the APAR for the period 01.04.2012 to 16.11.2012, although the overall grading has been awarded as 6.5 by Reporting Officer and 6.0 by the Review Officer which is equivalent to 'Very Good'. However, the Reporting Officer has recorded the comments as under:-

"The officer was doing the job in routine manner and needs additional initiative as he is quite senior."

The Reviewing Officer, while moderating the overall grading from 6.5 to 6.0 has agreed with the remark of the Reporting Authority.

In the APAR for the period 21.11.2012 to 31.03.2013, the overall grading has been awarded as 6.3 by Reporting Officer as well as Reviewing Officer which is equivalent to 'Very Good'. However, the Reporting Officer has recorded the comments as under:-

"Considering the seniority of the officer, he has to take more initiative and have effective monitoring system to get desired output instead of doing the job in a routine manner."

The Reviewing Officer has recorded that he is satisfied that the Reporting Authority has made his report at the descript part with due care and attention and after taking into account all relevant matters.

D. While assessing the APAR for the period 2013-14 in respect of Shri S.C. Panigrahi, the Committee noted that the APAR has been written in two parts. One from 01.04.2013 to 30.11.2013 and other from 01.12.2013 to 31.03.2014.

E. In the APAR for the period 01.04.2013 to 30.11.2013, the overall grading has been awarded as 6.57 by Reporting Officer as well as Reviewing Officer which is equivalent to 'Very Good'. However, the Reporting Officer has recorded the comments as under:-

"He is an intelligent officer. Being in senior position, he has to anticipate situation, plan proactively and guide his subordinates to get better result rather than doing the job routinely."

The Reviewing officer has recorded that he is satisfied that the Reporting Authority has made his report at the descript part with due care and attention and after taking into account all the relevant matters.

The Accepting Authority has also recorded the following remarks:-

"Agree with report. Officer needs to improve his performance by taking proactive actions and not just continue with routine activity."

In the APAR for the period 01.12.2013 to 31.03.2014, the overall grading has been awarded as 70 by Reporting Officer as well as Reviewing Officer which is equivalent to "Very Good". However, the Reporting Officer has inter-alia recorded the following comments:-

".... The officer is too polite for an industrial set up and needs to be tough with non-performing subordinates."

The Reviewing Officer had agreed with the Reporting Officer.

F. Taking cognizance of the above remarks, the Committee was of the considered opinion that the overall objective assessment of the performance of the officer as reflected in the APAR for the years 2012-13 & 2013-14 is not noteworthy an result oriented to qualify to meet the prescribed benchmark for the promotion post in HAG carrying higher duties and responsibilities. The Committee accordingly assessed the APAR for the said two years as "Good" only in terms of para 6.2.1 (e) of DoP&T OM dated 10.04.1989."

12. As stated by the respondents and also recorded in the impugned minutes of the DPC, the DPC has assessed the overall performance of the applicant taking into account the entries in the ACR, which have been appropriately assessed and the finding of the DPC recorded. Hence, we are unable to agree with the contention of

the applicant's counsel that the DPC's assessment is not as per the ACR, since the DPC has interpreted the observations in the ACR of the applicant for the years 2012-13 and 2013-14. These ACRs were duly communicated to the applicant who did not object to it as stated in the Counter filed in this case. The facts of the OA No. 16/2015 for the Circuit Bench, Nainital referred to by the learned counsel for the applicant were different. The applicant in that OA had appealed against the overall grading of "Good" to the Appellate Authority i.e. President, who in consideration of the facts, decided to upgrade the grading to "Very Good". But the DPC considered that entry to be "Good" in contravention to the decision of the Appellate Authority, which is not within the competence of the DPC. In the present OA, the facts are different. The DPC has examined the comments of the Reporting and Reviewing authorities from which the overall grading of the applicant was treated to be below benchmark i.e., "Good" although the Reviewing authority had assessed the applicant to be "Very Good". This was done as per the para 6.2.1.(e) of the OM dated 10.04.1989 of the DOPT as indicated the impugned minutes dated 09.05.2016 of the DPC.

13. Further, there is no rule or guidelines of Government in support of the applicant's contention that the DPC's assessment of an officer's ACR is to be communicated, if it is below benchmark. The para 3 (v) of the letter dated 16.09.2011 does not stipulate that before assessing any ACR entry by DPC as below benchmark, which is adverse, the applicant has to be informed. The para 3 (v)

stipulates that the employee should have been informed about his deficiency during the period for which ACR is being written before reporting/reviewing/accepting authority decide to give any adverse entry in the ACR. If the applicant was not informed anything about these entries in the ACR, then he should have objected to such entries after he received copy of the ACRs in question asking him to represent if he does not agree with it. By not representing, the applicant has accepted these entries, which were considered as adverse by the DPC.

14. We notice that in the case of **Nutan Arvind (Smt.) v. Union of India & Anr., (1996) 2 SCC 48, Hon'ble Supreme Court** has laid down the following principles regarding the competence of the DPC to assess suitability of an officer for promotion:-

"5. The DPC which is a high level committee, considered the merits of the respective candidates and the appellant, though considered, was not promoted. It is contended by learned counsel for the appellant that one K.S. Rao was the officer at the relevant time to review the performance of the appellant whereas in fact one Menon had reviewed it. The latter was not competent to review the performance of the appellant and to write the confidentials. We are afraid we cannot go into that question. It is for the DPC to consider at the time when the assessments of the respective candidates is made. When a high level committee had considered the respective merits of the candidates assessed the grading and considered their cases for promotion, this Court cannot sit over the assessment made by the DPC as an appellate authority. The DPC would come to its own conclusion on the basis of review by an officer and whether he is or is not competent to write the confidentials is for them to decide and call for report from the proper officer. It had done that exercise and found the appellant not fit for promotion. Thus we do not find any manifest error of law for interference."

Similarly, the case of **State of M.P. v. Srikant Chapekar, AIR 1993 SC 1221**, it is held by Hon'ble Supreme Court as under:-

"4. We are of the view that the Tribunal fell into patent error in substituting itself for the DPC. The Remarks in the annual confidential report are based on the assessment of the work and conduct of the official/officer concerned for a period of one year. The Tribunal was wholly unjustified in reaching the conclusion that the remarks were vague and of a general nature. In any case, the Tribunal 'outstepped its jurisdiction in reaching the conclusion that the adverse remarks were not sufficient to deny the respondent his promotion to the post of Deputy Director. It is not the function of the Tribunal to assess the service record of a Government servant and order his promotion on that basis. It is for the DPC to evaluate the same and make recommendations based on such evaluation. This Court has repeatedly held that in a case where the Court/Tribunal comes to the conclusion that a person was not considered for promotion or the consideration was illegal then the only direction which can be given is to reconsider his case in accordance with law. It was not within the competence of the Tribunal, in the facts of the present case, to have ordered deemed promotion of the respondent."

15. From the judgments of Hon'ble Supreme Court as discussed above, it is clear that the DPC's competence to assess the suitability of the applicant cannot be adjudicated by this Tribunal as an appellate forum unless any violation of rules or guidelines of Government is established or the findings of the DPC are not as per the order of the competent authority interpreting the ACR grading of an employee. We are not able to agree with the contention of the applicant's counsel that the DPC treated the ACR entries in question which are advisory, since, the DPC considered these remarks as adverse and there is no decision or order of the competent authority or Government stating that such entries in the ACR would be treated as advisory with no adverse implications for the applicant. In this case, the applicant has been considered for promotion by the DPC, which, for the reasons as mentioned in the minutes dated 09.05.2016, has assessed the applicant not suitable for promotion to

HAG and we do not find any violation of rules or guidelines of government in its decision/recommendation.

16. In view of above, we are not inclined to interfere in the matter and the OA lacking merit, is liable to be dismissed. Accordingly, the OA is dismissed. There is no order as to costs.

(GOKUL CHANDRA PATI)
MEMBER-A

(DR. MURTAZA ALI)
MEMBER-J

Arun..