

**Central Administrative Tribunal
Principal Bench**

OA No. 1919/2013

Order reserved on: 05.09.2016
Order pronounced on: 04.10.2016

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. V. N. Gaur, Member (A)

Dr. H.C. Goel
S/o Late Sh. P.L. Goel,
A-78/2, DDA (SFS) Flats,
Saket,
New Delhi-110015.

- Applicant

(By Advocate: Mr. S.P. Chadha)

Versus

1. Union of India
Through Secretary,
Deptt. Of Defence Research & Development and
SA to DM&DGR&D, DRDO,
Ministry of Defence,
DRDO Bhawan,
Rajaji Marg,
New Delhi-110001.
2. The Chairman,
Peer Committee for SC 'F' to 'G' DRDS (1999-2000)
Recruitment & Assessment Centre,
Lucknow Road,
Timarpur,
Delhi-110054.
3. Director,
Institute of Nuclear Medicine and Allied Sciences,
Brigadier S.K. Mazumdar Marg,
Delhi-110054.

- Respondents

(By Advocate: Mr.Satish Kumar)

ORDER**Hon'ble Mr. V.N. Gaur, Member (A)**

The applicant has filed the present OA seeking the following relief:

- “(a) Call for the records of the case.
- (b) Quash and set aside Peer Committee meeting held on 01.06.2011 for promotion of Scientist ‘F’ to the grade of Scientist ‘G’ in respect of the applicant and direct his case to be reviewed without taking into consideration parts I, II or the biodata and one-page brief bio-data, grant all consequential reliefs including back wages as on date as Scientist ‘G’ since 01.07.2000;
- (c) Award costs of the proceedings and
- (d) Pass any other order/direction which this Hon'ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case.”

2. The facts of the case in brief are that the applicant was working as Scientist ‘F’ in the Institute of Nuclear Medicine and Allied Sciences (INMAS), Delhi. Under the Flexible Complementing Scheme (FCS) for time-bound promotion of scientists from one grade to the next higher grade, the applicant was eligible for promotion from the level of Scientist ‘F’ to Scientist ‘G’ in the year 2000. Such promotions are governed by the Defence Research and Development Service (DRDS) Rules, 1979 (hereinafter referred to as the DRDS Rules). According to Rule 8 of these Rules, the cases for promotion from Scientist ‘F’ to Scientist ‘G’ are first

assessed by an Internal Screening Committee on the basis of evaluation of Confidential Performance Appraisal Report (CPAR), and thereafter by a Peer Committee. While making the assessment the Peer Committee has to take into account merit, achievements, personality, leadership and managerial qualities etc. but the Rule 8 prohibits any interview for the assessment of candidates. For easy reference the relevant extracts from Rule 8, and Schedule 1D of the DRDS Rules indicating the composition of the Peer Committee, are reproduced below:

“8 (2) (a): Promotion from one grade to the next higher grade in the service shall be made under the flexible complementing scheme from amongst the officers possessing the broad educational qualifications as given in Schedule-III. Promotion upto the level of Scientist-F shall be made on the basis of evaluation of confidential performance appraisal reports and assessment interview and for Scientist-F to G on the basis of the evaluation of confidential performance appraisal reports and assessment by a Peer Committee.....”

8 (2) (b) (ii) A Peer Committee constituted as specified in Schedule 1D shall assess those Scientists-F who have completed the prescribed minimum residency period and are recommended by the Internal Screening Committee for assessment for promotion to the next higher grade.

8 (2) (e): Recommendations for promotion of Scientists-F who have been declared eligible by the Internal Screening Committee to Scientists-G shall be made by the Peer Committee taking into consideration merit, achievements, personality,

leadership and managerial qualities etc. There shall be no assessment interview.

SCHEDULE ID

(See Rule 8(2))

The Peer Committee for assessing suitability of Scientist “F” and Scientist “G” for promotion to the next higher grade in Defence Research and Development Service

(i)	Chairman, Recruitment & Assessment Centre, Department of Defence Research Development	Chairperson
(ii)	Secretary, DODR &D	Member
(iii)	Any two Secys from other Scientific Departments Of the Central Govt. decided by the Chairperson	Member
(iv)	An eminent Scientist or Management Specialist, Nominated by Chairperson	Member

3. It is undisputed that the Peer Committee considered the applicant in the meeting held on 01.07.2000 but did not recommend his promotion. The applicant challenged the recommendations of the Peer Committee in OA No.274/2001, which was put in *sine die* list when it was brought to the notice of the Bench by both sides that the decision of this Tribunal in a case of ‘similar nature and facts of similar type’ (**Dr. R.R. Dayal v UOI and others**, OA 1968/2000) was under challenge before the Hon’ble High Court of Delhi. The aforesaid writ petition (WP No. 2082/2001) was decided by the High Court on 17.03.2005. This fact was brought to the notice of this Tribunal only in 2011. The OA no. 274/2001 was thereafter revived, and decided on 17.03.2011 on the basis of the claim of the learned counsel for

the applicant that the facts of that OA were similar to that of the case of **Dr. R.R. Dayal** (supra). For easy reference the relevant portion of the order in OA No. 274/2001 is reproduced below:

“7. Having considered the contentions raised by the parties, we are of the opinion that the issues decided in Dr. R.R. Dayal’s case (supra) by this Tribunal and upheld by the Hon’ble High Court of Delhi should be taken into account while examining the facts and circumstances of the case of the Applicant in the present OA by the Respondents as expeditious as possible. While comparing and taking a decision on the same, if the applicant is found similarly circumstanced, the Respondents are directed to extend the benefits accrued to Dr. R.R. Dayal in OA No.1968/2000 upheld in Writ Petition 2082/2001 to the Applicant in the present OA. In case they find there is dis-similarity between the two cases, the Respondents are directed to give an opportunity to the Applicant to explain how he is similarly placed and circumstanced and after hearing him, an appropriate speaking and reasoned order needs to be passed with a copy to the Applicant. The whole exercise in the present case should be completed by the Respondents within 9 weeks from the date of receipt of certified copy of this order. There is no order as to costs.”

4. In **Dr. R.R. Dayal** (supra) decided on 14.12.2000 this Tribunal had given the following directions:

“10. The learned counsel for the respondents has, on the other hand, relied on the judgment of the Supreme Court in Om Prakash Shukla v. Akhilesh Kumar Shukla, AIR 1986 SC 1043. The learned counsel has stated that a petition challenging the validity of competitive examination filed on realization that he would not succeed cannot be sustained, and this is what has been held by the Supreme Court in the aforesaid case. We find that the facts and circumstances of the case before the Supreme Court and the point on which a decision was taken are not relevant for our purpose and cannot find application in the instant case. The learned counsel for the applicant nevertheless sought to meet the point raised by contending that there can be no estoppels in the face of law/rules.

11. In the background of the above discussion, we allow the OA and quash and set aside the peer committee

proceedings for Scientists 'F' to Scientists 'G' for the years 1999 and 2000 insofar as the same relate to the applicant. The respondents will carry out a **fresh assessment** of the applicant for his upgradation under the flexible complementing scheme **without taking into account the self-appraisal report** referred to above. It is clarified that the **director's comments/recommendations forming part of the self-appraisal report will also not be taken into account**. The respondents are further directed to organize a review meeting of the peer committee expeditiously and in any event within three months from the date of receipt of a copy of this order.

12. The OA is allowed in the aforesaid terms, with no order as to costs." *[emphasis supplied]*

5. While disposing of the writ petition no. WP(C) 2082/2001 challenging the Tribunal's order in OA 1968/2000 the Hon'ble High Court of Delhi in its order dated 17.03.2005 gave the following directions:

"It is stated that after filing of this writ petition in this Court wherein a challenge was made to the legality and validity of the aforesaid judgment and order, the petitioner proceeded to implement and give effect to the directions issued by the Tribunal in paragraph 11 so far as it related to the respondent alone. An application was also filed by the petitioner seeking for stay in respect of aforesaid direction contained in paragraph 11 of the stay application. **The said application as also the petition have been rendered infructuous so far as the same relates to the respondent herein since the order passed by the Tribunal has been implemented and has been given effect to.** So far as the respondent is concerned, in our considered opinion nothing survives in his petition as the respondent has already received relief which he has sought in his petition filed before the Tribunal. However, **we are of the considered opinion that the aforesaid observations as contained in paragraph 11 were issued by the Central Administrative Tribunal in the case of the respondent alone and therefore, the same is applicable to the facts and circumstances of the case of the respondent alone and the same shall not be construed as binding and applicable in case of any other similarly situated person.** If and as and when

such a **plea is raised by any other person** which is raised by the respondent herein in the original application, the same **shall have to be considered afresh in accordance with law. The observations made in the impugned judgment and order shall not be construed as binding so far other persons are concerned.** It shall also be open to the respondent to challenge any adverse order made against him by the petitioner subsequent to the passing of the order passed by the Tribunal as he same gives rise to a fresh cause of action.”[emphasis supplied]

6. In compliance of the order of the Tribunal dated 17.03.2011 and giving parity to the applicant with Dr. R.R. Dayal the respondents convened the meeting of the Peer Committee on 01.06.2011 for considering promotion of the applicant from Scientist ‘F’ to Scientist ‘G’ for the year 2000 but the Peer Committee after reviewing the record of the applicant, did not recommend his promotion. The applicant filed the Contempt Petition No.677/2011 in OA No.274/2001 wherein this Tribunal took a view that the Peer Committee had considered the case of the petitioner in true spirit of the judgment and with this there was fair and reasonable compliance of the order dated 17.03.2011. It was also observed that the petitioner might not be satisfied with the decision of Peer Committee and in that case he should assail the same in appropriate proceedings. The present OA has been filed by the applicant as a sequel to that order.

7. It is relevant to note here that during the pendency of OA No.274/2001 the applicant was considered for promotion during

the years 2001, 2002 and 2003 also. He was promoted in the year 2003 to the level of Scientist 'G' with effect from 01.07.2003 before he retired on 30.09.2003.

8. Learned counsel for applicant in his submission stated that the applicant fulfilled all the conditions specified in the DRDS Rules, 1979 for promotion to the level of Scientist 'G'. The respondents in an illegal and arbitrary manner had introduced a proforma for submitting bio-data (self-appraisal report) for promotion to the grade of Scientist 'G' in which a Scientist 'F' had to fill in details such as training course attended, list of paper/publications/patents, contribution/achievements in DRDO projects/programmes and studies and future plan, membership of professional societies/Institutions, Awards/Honours etc. In the Part-II of the proforma the Director had to comment on the information furnished by Scientist in Part-I and give his recommendations. This was in utter violation of Rule 8 the DRDS Rules which provided that after a Scientist 'F' had been screened by the Internal Screening Committee, the Peer Committee had to give its recommendations by taking into consideration merit, achievements, personality, leadership and managerial qualities etc of the candidate. There is no provision in the Rules for the Peer Committee to call for additional information, and comments and recommendations of the Director concerned, by prescribing a

proforma. Considering any such input at the time of assessment would vitiate the proceedings of the Peer Committee. Considering the same argument in **Dr. R.R. Dayal** (supra) this Tribunal had quashed the Peer Committee recommendations for the years 1999 and 2000 in respect of the applicant in that case. The respondents were directed to carry out fresh assessment of the applicant for upgradation under FCS without taking into account the self-appraisal report and the comments/recommendations of the Director. The writ petition against that order was dismissed by the Hon'ble High Court.

9. The learned counsel further submitted that following the direction of this Tribunal in the order dated 17.03.2011, the respondents were to consider the case of the applicant in the same manner as of Dr. R.R. Dayal but the Peer Committee meeting held on 01.06.2011 was only for the sake of formality to reject the case of the applicant for promotion in a cursory manner. The Peer Committee simply noted that the applicant was not to be promoted w.e.f. 01.07.2000 without giving any reason. The applicant had also obtained the minutes of the meeting of the Peer Committee for the years 2000, 2001 and 2002 through RTI in the year 2012, and in each of these minutes the rejection of promotion of the applicant was without giving any reason. This reflected a total lack of transparency, violation of the principles of

natural justice, lack of application of mind, and *malafide* on the part of the respondents. Further the direction given in the order dated 17.03.2011 was to pass a speaking and reasoned order which has not been done.

10. Learned counsel for the respondents denied the allegations made by the applicant and raised preliminary objections of limitation and maintainability. He stated that the applicant was challenging the recommendation of the Peer Committee dated 01.06.2011 following the liberty given by this Tribunal by order dated 08.09.2011 in CP 677/2011 in OA 274/2001. The present OA was filed on 30.05.2013 and therefore, it was barred by limitation. Further, the applicant was seeking retrospective promotion which was not permissible in law. Referring to the DOP&T instructions dated 12.08.1998 and the orders of this Tribunal in OA No.854/2012 and OA No.3714/2011 learned counsel submitted that the retired officials would not have any right of promotion.

11. Regarding merits of the case the learned counsel drew attention to the order dated 17.03.2011 and stated that the direction was to consider the applicant in the light of the Tribunal's order in OA 1968/2000 as upheld by the High Court in WP (C) No.2082/2001, if he was similarly circumstanced as the applicant in **Dr. R.R. Dayal's** case. Treating him as similarly

circumstanced, the applicant's case was considered in 2011 in the same manner as that of Dr. R.R. Dayal by assessing the applicant without taking into account his self-appraisal report. However, it was the prerogative of the Peer Committee to evaluate his performance in accordance with rules and make its recommendation. The Peer Committee did not find him 'fit' for promotion. In such a situation the Tribunal's order dated 17.03.2011 did not envisage a reasoned and speaking order. The Peer Committee being on the same footing as Departmental Promotion Committee was not required under the rules to give reasons for its recommendations.

12. We have considered the submissions made by the learned counsel for the parties and perused the record.

13. Following the dismissal of the CP No.677/2011 in OA No.274/2001 on 08.09.2011 the applicant has filed the present OA on 30.05.2013. The OA is, therefore, barred by limitation. However, the applicant has filed MA No.1546/2013 for condonation of delay. The main reason for the delay is stated to be the applicant's repeated effort to find information from the respondents under the RTI for which he had to approach Central Information Commission also. He also had to change his counsel because earlier counsel was not giving desired response. The respondents in their counter, apart from stating that the

application is time barred, have not seriously opposed the MA. For the reasons stated therein, the MA for condonation of delay is allowed.

14. The main controversy in the OA centres on the recommendation of the Peer Committee in the meeting held on 01.06.2011 that the applicant "Not to be promoted as Sc 'G' with effect from 01 Jul 2000." The prayer of the applicant is to review his case "without taking into consideration parts I, II or the biodata and one-page brief bio-data". It is alleged that the Peer Committee considered his case on 01.06.2011 but in an arbitrary manner rejected his case without giving any reason. The respondents also did not pass a reasoned and speaking order as directed by this Tribunal in the order dated 17.03.2011.

15. In the aforesaid order the Tribunal had directed the respondents to consider the case of the applicant in terms of Dr. R.R. Dayal's case as upheld by the Hon'ble High Court and while doing so the respondents should first examine the facts and circumstances of the case of the applicant whether he was similarly circumstanced as Dr. R.R. Dayal. If he was found to be similarly circumstanced the respondents were directed to extend the same benefit as accrued to Dr. R.R. Dayal. If there was dissimilarity between the two cases, the applicant was to be given

opportunity to explain how he was similarly placed, and after hearing him, an appropriate speaking order was to be passed.

16. Admittedly the respondents found the applicant as similarly circumstanced as Dr. R.R. Dayal, and referred his case to the Peer Committee for a fresh consideration without taking into account the self-appraisal report, which was the bone of contention in Dr. R.R. Dayal's case (supra) as also in OA No.274/2001. The Peer committee in the minutes dated 01.06.2011 have indicated that the case of the applicant had been considered in terms of the directions of the Tribunal and the attributes mentioned in the Rule 8 (ibid) had been taken account while arriving at its recommendation. The case of the applicant has, thus, been, considered without taking into account parts I&II of his bio data (self appraisal report). For the convenience of reference the aforesaid minutes are reproduced below:

“MINUTES OF PEER COMMITTEE FOR PROMOTION
OF SCIENTIST ‘F’ TO THE GRADE OF SCIENTIST ‘G’
PERSUANCE OF CAT (PB) ORDER OA NO.274/2001

CAT (PB) in its judgment vide OA No.274/2001 dated 17 March 2011 has directed to constitute an Assessment Board to review the case of Dr. HC Goel, Sc ‘G’ (Retd) of INMAS for his promotion from Sc ‘F’ to Sc ‘G’ for the year 2000 without taking into consideration of Para I & II of his Biodata (self appraisal report). Accordingly, his case has been considered in the Peer Committee Meeting held at 1030 hrs on 01 June 2011 in Conference Room at 5th Floor DRDO Bhawan, New Delhi.

CHAIRMAN

MEMBERS

2. The Peer Committee perused and evaluated the CPARs of Dr. HC Goel, Sc 'G' (Retd) of INMAS. Taking into account holistic view of the scientists work in the Sc 'F' grade and the attributes like quality of R&D activities, timely completion of assigned tasks, management ability, leadership quality and potential for undertaking higher responsibility, the Peer Committee recommends that

(i) Dr. H.C. Goel, Sc 'F' Not to be promoted as Sc 'G' w.e.f. 01 Jul 2000."

17. With regard to the contention of the applicant that the Peer Committee did not give any reason for its recommendation suggesting that there was no application of mind, we do not find any provision in the DRDS Rules that makes it obligatory for the Peer Committee to indicate reasons for its recommendations. In the absence of any statutory provision, the minutes of the Peer Committee cannot be held illegal on this ground alone. Rule 8 (2) (e) (*ibid*) only states that the recommendations in respect of the candidates declared eligible by the Internal Screening Committee shall be made by the Peer Committee taking into account the specified attributes. The respondents have rightly drawn parallel with the proceedings of a DPC where the Committee is not required to indicate the reasons for arriving at its recommendations. In **UPSC Vs. K. Rajaiah & Ors.** 2005 (10) SCC 15, the Hon'ble Supreme Court reiterated the view that the principles of natural justice do not require a Selection Committee to record reasons for the selection or non-selection of a person in

the absence of statutory requirement. The relevant portion of that order is reproduced below :-

“ We cannot also endorse the view taken by the High Court that consistent with the principle of fair play, the Selection Committee ought to have recorded reasons while giving a lesser grading to the 1st respondent. The High Court relied on the decision of this Court in National Institute of Mental Health & Neuro Sciences Vs. Dr. K. Kalyana Raman & Ors. [AIR 1992 SC 1806]. Far from supporting the view taken by the High Court, the said decision laid down the proposition that the function of the Selection Committee being administrative in nature, it is under no obligation to record the reasons for its decision when there is no rule or regulation obligating the Selection Committee to record the reasons. This Court then observed "even the principles of natural justice do not require an administrative authority or a Selection Committee or an Examiner to record reasons for the selection or non selection of the person in the absence of statutory requirement. This principle has been stated by this Court in R.S. Das Vs. Union of India [1986 (Suppl.) SCC 617] at Page 633."

18. The contention of the applicant that the respondents have not passed any reasoned and speaking order in terms of the Tribunal's order dated 17.03.2011, is without any basis. As can be seen from the order extracted in para 3 of this order, the direction to pass a speaking order was conditional to the situation where the applicant's case was found to be dis-similar to that of Dr. R.R. Dayal. In that eventuality the respondents were to pass a speaking order after giving a hearing to the applicant. Since such a contingency did not arise, the respondents were not obligated to

pass a speaking order. We therefore do not find any merit in the contentions raised by the applicant.

19. Additionally it is noted that the applicant had been considered for promotion during the year 2001, 2002 and 2003 and he was finally promoted during the year 2003. The High Court in the order dated 2005 had noted that the petitioners (respondents in this case) had already implemented the order in **Dr. R.R. Dayal** (supra) in respect of the applicant. It was emphasised more than once in that order that **Dr. R.R. Dayal** order was specific to the applicant and will not apply generally. The promotion of the applicant in the year 2003 was apparently by following the same procedure which was challenged by him in OA No.274/2001 and the present OA. Having accepted promotion under the same system the applicant is also estopped from challenging the same.

20. In the light of the preceding discussion and stated reasons, we do not find any merit in the OA and the same is dismissed. No costs.

(V.N. Gaur)
Member (A)

(Justice Permod Kohli)
Chairman

‘sd’

04 October, 2016