

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.3748/2014

Thursday, this the 7th day of January 2016

Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)

Mrs. Premlata, aged 58 years
w/o Mr. Kishan Gopal
Senior Accounts Officer
Group 'B' (Gazetted)
O/o CDA (AF)
R K Puram, New Delhi Cantt.110066

..Applicant

(Mr. E J Verghese, Advocate)

Versus

1. Union of India through the Secretary
Ministry of Defence
Govt. of India
South Block, New Delhi-11
2. The Secretary UPSC
Dholpur House,
Shahjahan Road, New Delhi
3. The CGDA, Ulan Batar Road
Palam
Delhi Cantt-110010
4. The CDA (AF), West Block-V
Sector-1 R K Puram
New Delhi Cantt-110066
5. Mrs. Nishta Upadhyaya
IFA (Navy)
E Block, DHQ, PO
Hutments, New Delhi-110011
6. Mr. Charanjit Sharda, DCDA (Rtd.)
Through
115, Arya Nagar, Sardana Road
Meerut Cantt.

..Respondents

(Mr. Rajinder Nischal and Mr. Ashish Nischal, Advocates for
Respondent Nos.1, 3 and 4 – Nemo for other respondents)

O R D E R (O R A L)

Mr. A.K. Bhardwaj:

The prayer made in the instant Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 reads thus:-

“(a) Allow the Application of the Applicant under section 19 of the Administrative Tribunals Act 1985 with cost.

(b) Expunge the Average / Zero grading of the APAR for the period 12/08/2009-31/03/2010 and 01/04/2010-31/03/2011.

(c) Quash and set aside the rejection / so called speaking orders dated 27/05/2011 & 12/12/201.

(d) Quash and set aside the order dated 20/02/2014, declaring the applicant as unfit.

(e) Direct the respondents to promote the applicant to Junior Time Scale (Group A) Officers in the Pay Band of Rs.15600-39100 with grade of Rs.5400/-

(f) Grant the cost of the application.

And

(f) Any other relief, if any, this Honourable Tribunal deems fit and proper in the facts and circumstances of the case.”

2. Though in the Original Application filed by him the applicant has raised several grounds pervaded in paragraph 5 (A) to (Z/2), during the course of arguments, Mr. E.J. Verghese, learned counsel for applicant pressed the ground 5 (L). We find that in the representation dated 14.09.2010 (Annexure A/4) made for upgradation of MTCR for the period 12.08.2009 to 31.03.2010, the applicant had espoused:- during the report period he had made all efforts to clear the assigned work sincerely and honestly; medical bills and other bills passed in time, leave part II orders were published and cheques issued in time, pending leave cases were got

settled, NDCs to the Air Force Personnel issued in time, all the work got completed in due time, apart from above any other work assigned, i.e., PPO cases, etc. by superiors was also done in time; in part III of the APAR, the reporting officer himself viewed that he is reasonably prompt in disposal and submission of report and returns; able to maintain discipline and to check late attendance, able to handle staff/subordinates; good relations with her fellow employees and his superiors; and able to handle intricate cases and specific items of work authorized to the limited extent, in the impugned order of disposal of representation Annexure A-1 (collectively), the aforementioned pleas of the applicant have not been commented upon. Similarly, various pleas raised by the applicant in his representation dated 27.07.2011 (Annexure A-9) made for upgradation of APAR for the period from 01.04.2010 to 31.03.2011 have not been dealt with.

3. In terms of O.M. No.21011/1/2010-Estt. A dated 13.04.2010, the representation for upgradation of APAR need to be dealt with in a quasi judicial manner. The O.M. reads thus:-

“The undersigned is directed to say that prior to the reporting period 2008-09, only the adverse remarks in the ACRs had to be communicated to the concerned officer for representation, if any to be considered by the competent authority. The question of treating the grading in the ACR which is below the benchmark for next promotion has been considered in this Department and it has been decided that if an employee is to be considered for promotion in a future DPC and his ACRs prior to the period 2008-09 which would be reckonable for assessment of his fitness in such future DPCs contain final grading which are below the benchmark for his next promotion, before such ACRs are placed before the DPC, the concerned employee will be given a copy of the relevant ACR for his representation, if any, within 15 days of such communication. It may be noted that only below benchmark ACR for the period relevant to promotion need be sent. There is no need to send below benchmark ACRs of other years.

2. As per existing instructions, representations against the remarks or for upgradation of the final grading given in the APAR (previously known as ACR) should be examined by the competent

authority in consultation, if necessary, with the Reporting and the Reviewing Officer, if any. While considering the representation, the competent authority decides the matter objectively in a quasi-judicial manner on the basis of material placed before it. This would imply that the competent authority shall take into account the contentions of the officer who has represented against the particular remarks/grading in the APAR and the views of the Reporting and Reviewing officer if they are still in service on the points raised in the representation vis-a-vis the remarks/gradings given by them in the APAR. The UPSC has informed this Department that the Commission has observed that while deciding such representations, the competent authorities sometimes do not take into account the views of Reporting/Reviewing Officers if they are still in service. The Commission has further observed that in a majority of such cases, the competent authority does not give specific reasons for upgrading the below benchmark ACR/APAR gradings at par with the benchmark for next promotion.

3. All Ministries/ Departments are therefore requested to inform the competent authorities while forwarding such cases to them to decide on the representations against the remarks or for upgradation of the grading in the APAR that the decision on the representation may be taken objectively after taking into account the views of the concerned Reporting/Review Officers if they are still in service and in case of upgradation of the final grading given in the APAR, specific reasons therefor may also be given in the order of the competent authority.”

4. In view of the aforementioned, the impugned order dated 27.05.2011 and 12.12.2011 are quashed being non-speaking. The matter is remitted back to the concerned authority for fresh disposal of the representations in terms of the provisions contained in aforementioned O.M. dated 13.04.2010, within four weeks from the date of receipt of a copy of this Order. No costs.

(V.N. Gaur)
Member (A)

(A.K. Bhardwaj)
Member (J)

January 7, 2016
/sunil/