

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.3901/2012

Reserved on: 19.04.2017
Pronounced on: 08.05.2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mrs. P. Gopinath, Member (A)**

Dr. Jatinder Kaur,
Dental Surgeon,
R/o C/o Hindu Rao Hospital,
Delhi. Applicant

(Present: Applicant in person)

VERSUS

1. North Delhi Municipal Corporation
Through it's Commissioner,
Civic Centre, 17th Floor,
Jawahar Lal Nehru Marg,
New Delhi.
2. Medical Superintendent
Hindu Rao Hospital,
Delhi-110054. Respondents

(By Advocate: Ms. Pooja Makhija Wahal)

ORDER

Mrs. P.Gopinath, Member (A):

Applicant is working as a Dental Surgeon at Hindu Rao Hospital, Delhi. The applicant was last promoted as CMO NFSG w.e.f. 16.07.2002. The benchmark for next promotion to SAG under DACP Scheme is "Very Good". The applicant was, however, graded "Good" for two years 2004-2005 and 2007-2008. The applicant was informed of the below benchmark grading on 17.08.2010 and advised to make a representation if she wanted to do so. The applicant made a representation and was informed on 24.08.2011 that her case for

upgradation had been rejected. Hence though belated, compliance of Apex Court orders in **Dev Dutt Vs. Union of India and Others** (2008) 8 SCC 725), has been made. Whereas grading for the remaining assessment period i.e. 2002-2003, 2003-2004, 2005-2006 are "Very Good", the promotion to Senior Administrative Grade stands denied on the ground of below benchmark grading for two years cited above.

2. Applicant challenges the rejection of appeal made towards the below benchmark grading for the year 2004-05 and 2007-08 and prays for upgradation of the said ACR for the purpose of next promotion.

3. Respondent argues that the applicant herein had made a representation on 1.09.2010 for upgrading her ACR at par with the required benchmark for promotion. The competent authority considered the representation of the applicant objectively and after taking the same into consideration, decided not to interfere with the said grading which was communicated to the applicant.

4. The Bench, in view of arguments made by applicant and in order to have a better understanding of the matter, called for perusal the APAR of the applicant. In the APAR for the year 2004-05 the applicant has been graded "Good" by the Reporting Officer and the Reviewing Officer. The Reviewing Officer in his recording in the relevant column 2 Part-IV of the ACR, has upheld the report remark "Good" recorded in Part-III column 14 of the APAR. At page 85/C correspondence of the APAR folder, it is recorded by the Director, RBIPMT that the APAR of the applicant has been reviewed based on the reporting of MS/HRH

(Reporting Officer) and the review of the applicant stands the same, thereby confirming the grading already recorded. For the year 2007-08 the Reporting Officer has assessed the applicant as "Good" and the Reviewing Officer in Part IV relevant column 2 has recorded remark "yes", agreeing with the remarks of the Reporting Officer accorded in column 14 Part-III of the APAR proforma. Applicant argues that the Reviewing Officer had in Part IV column-4 of the review report relating to "attitude and potential of the officer reported upon and suggestion for possible lines of growth and development" recorded the observation "fit for promotion" and submits this as a favourable cause for promotion. The Tribunal opines that the reviewing officer has agreed with the reporting officer assessment of "good" in the relevant and appropriate Part IV column 2, and column 4 relied on by applicant does not contain anything related to assessment of the applicant in terms of grading.

5. We also note from the APAR folder produced in Court that the applicant's representation (undated) against below benchmark grading for the two years is placed on record at 53/C and 54/C. Also placed on record is the reply to the representation wherein the applicant was informed that her request for upgrading the ACR for the year 2004-05 and 2007-08 from "good" to very good" has been rejected by the competent authority i.e. Additional Commissioner (Health). Thus compliance of Apex Court order in Dev Dutt's case of being given an opportunity to represent against below benchmark APAR grading has been afforded to applicant. The applicant has 4 "very good" and 1 "good" grading in the period 2002-03 to 2006-07. As per Department of Personnel OM dated 18.02.2008, the benchmark for promotion of

applicant to SAG is "very good". Applicant is seeking promotion to SAG w.e.f. 29.10.2008 and the relevant CRs for 5 years would be 2002-2003 to 2006-2007 in which period the below benchmark grading of "good" for year 2004-2005 would fall. The grading of "good" for 2007-2008 is not to be considered as it falls in the sixth year and would be outside the zone of consideration. The applicant's case for promotion was considered by the Review Screening Committee (RSC), which met on 3.11.2011, for promotion of Dental Surgeon to SAG scale of pay on ad hoc basis under DACP Scheme. The RSC met on 3.11.2011, after disposal of applicant's representation on 24.08.2011 for upgrading her APAR. It is recorded in para 4 (c) of the RSC minutes that the applicant does not fulfil the prescribed grading criteria for grant of SAG scale. The said RSC has similarly not approved the promotion of two other similarly placed persons. Hence this does not appear to be a case where the applicant alone has been discriminated against, or not considered, on account of not fulfilling the prescribed criteria for grant of promotion to the scale of SAG.

6. Applicant brings to our notice Annexure-A 3 letter wherein the retired HOD Dental of the respondent hospital submits "I have reported as 'good' in column number 15 of Part III in the above said CR. I hereby certify that I have graded as good in my earlier report which may kindly be upgraded to as "very good" as per the requirement of benchmark for promotion as circulated by Govt. of India, Deptt. of Personnel". Such a letter issued in 10.08.2011 three years after recording report in the ACR of applicant relating to year 2007-08 and that too after retirement of the Reporting officer would not be admissible or valid, as per CR writing guidelines of the

Government of India as the grading once recorded cannot be altered by a written communication of Reporting officer. The upgradation, if any, would be permissible only on the basis of a representation by applicant and by an authority superior to the Reviewing authority.

7. The Apex Court had held that in service jurisprudence Government servants have a right to be considered for promotion according to rules and not a right to promotion [**Dev Dutt Vs. Union of India and Others** (2008)8 SCC 725), **Food Corporation of India and Others Vs. Parashotam Das Bansal and Others** (2008) 5 SCC 100) and **Tejshree Ghag etc.etc. Vs. Prakash Parashuram Patil and Ors etc.**(2007) 6 SCC 220]. Promotion is admissible as per conditions of recruitment rules or guidelines of Government of India on promotion.

8. In **S.B.Bhattacharjee Vs. S.D.Majumdar and Others** (2007) 10 SCC 513), the Hon'ble Supreme Court has held as follows:

"13. Although a person has no fundamental right of promotion in terms of Article 16 of the Constitution of India, he has a fundamental right to be considered therefor. An effective and meaningful consideration is postulated thereby. The terms and conditions of service of an employee including his right to be considered for promotion indisputably are governed by the rules framed under the proviso appended to Article 309 of the Constitution of India.

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15. It has not been denied or disputed before us that in a given case ACRs of an eligible candidate may not be written and, thus, may not be available. If the same is available, a notice in that behalf must be given, in the event, any exigency arises therefor to the affected officer and only upon consideration of the representation made by him, if any, the decision taken in that behalf by the Reviewing Authority shall be final. The ACR by immediate superior, thus, is not final or determinative, as the same would be subject to the decision of the Reviewing Authority.

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19. The Rules indisputably envisage that a person having an overall grading of 'outstanding' shall alone be considered vis--vis who do not come within the purview of the gradation of outstanding despite the fact that their service career they might have received overall grading of 'Very Good'".

9. The Bench notes that the reply given to the applicant's representation is a very cursory one. We also note that the applicant's representation is an equally cursory one in which she has cited punctuality and regular treatment of patients, discharging duties and responsibilities to the satisfaction of her superiors as reasons for upgradation. These are the criteria on which the applicant has already been assessed by the Reporting officer. Applicant brings forth no new facts to light in the representation. However, the only relief that the Tribunal can give, so that the applicant can have a understanding of her below benchmark grading, is for a more detailed and speaking reply which would be informative and help the applicant to improve her performance. The applicant is required to informed of the shortfall in her performance, as to why when she was awarded a "Very Good" grading in 2002-2003 and 2003-2004, the grading was downgraded to "good" in 2004-2005. Such a reply be given within 45 days.

10. OA is disposed off accordingly.

(Mrs.P.Gopinath)
Member (A)

(Justice Permod Kohli)
Chairman

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