

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No. 1606/2013

This the 27th day of September, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Shri K. M. Priyadarsanan,
S/o. Sh. K. Madhvan Pillai,
R/o. 111, Shravanti Orchids Apartment,
1st main, Padmanabha Nagar,
Bangalore-560 070.Applicant

(By Advocate : Mr. M. K. Bhardwaj)

Versus

UOI & Ors., through :

1. The Secretary,
Ministry of Defence, Govt. of India,
South Block, New Delhi.
2. The Director General,
Directorate General of Aeronautical Quality
Assurance, H-Block, DHQ, PO,
New Delhi – 110 001.Respondents

(By Advocate : Mr. Satish Kumar)

O R D E R (O R A L)

Justice L. Narasimha Reddy, Chairman :

The applicant was appointed as Junior Scientific Officer in the Directorate of Institute of Aeronautical Quality Assurance (DGAQA). Steps were initiated for the purpose of promotion to the post of Principal Scientific Officer in the Organisation against the vacancies of the year

2005-06, 2006-07 and 2007-08. The applicant was not declared fit for the post by the DPC, for those years. Being under the impression that he had been declared unfit on account of assessment for the year 2004-05, being below the bench mark, the applicant filed O.A No. 186/2010. The O.A was disposed of on 16.09.2010 directing that the applicant shall be communicated the ACR of the year 2004-05 and on receipt of the same, he can make a representation and in case the reporting authority and reviewing authority are not in service, the ACR of that year shall be ignored. Other ancillary directions were also issued.

2. The respondents filed W.P. (C) No. 1247/2011. Through its order dated 14.02.2012, a Division Bench of the Hon'ble Delhi High Court modified the order in the O.A to the effect that in case the reporting and reviewing authority are not in service, the representation shall be considered by the superior authority, as per the judgment of the High Court in **Union of India V. Krishna Mohan Dixit** decided on 08.10.2010.

3. The applicant submitted a representation to the respondents. On consideration of the same, an order was

passed on 19.12.2012 informing the applicant that the ACR for the year 2004-05 was not below bench mark at all and the question of any upgradation thereof does not arise. It was also mentioned that the occasion to conduct the review DPC does not exist.

4. Feeling aggrieved by the said communication dated 19.12.2012, the applicant filed this O.A. Apart from the relief for setting aside the said communication, the applicant prays for direction to the respondents to promote him to the post of Principal Scientific Officer with effect from 02.08.2007 or any date, ignoring the below bench mark grading contained in the ACR for the period 2004-05, 2005-06, 2006-07 & 2007-08. The applicant contends that refusal on the part of the respondents to promote him to the post of Principal Scientific Officer was on account of the grading in the ACRs for the concerned years and they deserve to be upgraded. Alternatively, it is pleaded that in case the ACR was not below bench mark, there was no basis for his being superseded by a junior.

5. The respondents filed a detailed counter affidavit. They stated that the DPC has taken into account the ACR of the 5 years of preceding the date of consideration, and on

an overall assessment for the relative merit of the candidates, those who were found fit were selected and since the applicant was not to be upto that level, he was not recommended.

6. We heard Shri M. K. Bhardwaj, learned counsel for applicant and Shri Satish Kumar, learned counsel for respondents.

7. This is the second round of litigation in relation to the selection and appointment to the post of Principal Scientific Officer in relation to the vacancies of the years 2004-05, 2005-06, 2006-07 and 2007-08. Being under the impression that he was not declared fit, on account of the below bench mark gradation in the ACR for the year 2004-05, the applicant filed O.A before this Tribunal. Taking the statement of the applicant to be correct the Tribunal disposed of the O.A directing that in case he makes a representation for upgradation of the ACR, the same shall be considered in accordance with relevant procedure and if the reporting and reviewing authorities retired, the ACR be ignored. The order was modified by the Hon'ble Delhi High Court to the effect that in case the reporting and reviewing authorities are not in service, the

representation can be considered by a superior officer. Accordingly, applicant made a representation. However, the verification of record reveals that the applicant had pursued the remedies before this Tribunal in respect of a non-existent fact. It was mentioned in the impugned order that the appraisal in the ACR of 2004-05 was not below bench mark at all.

8. To a specific question as to whether the appraisal of the year 2004-05 reflected below bench mark grading, the answer from the applicant is in the negative. Now, the applicant intends to repeat the same exercise to APAR for subsequent year. We cannot undertake any adjudication, in respect of an uncertain and fluid situation.

9. Further, the discretion of the DPC is very wide and it enjoys the power to evolve its own procedure to ensure that the eligible candidate is not discarded from consideration. In the process of choosing the officers for promotion to a higher post, the seniority alone cannot be the guiding factor. Once, it is convinced that an officer who is relatively junior has an 'Outstanding' performance and would be more suitable to the post concerned, Court, cannot interfere with the same. We are not inclined to

grant any relief to the applicant. The O.A is accordingly dismissed. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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