

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00780/2016

DATED THIS THE 24th DAY OF AUGUST, 2017

HON'BLE JUSTICE SHRI HARUN UL RASHID, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

Valsalan N.
Section Officer
IIA, Bangalore 560034.

.....Applicant

(By Advocate Shri J.Thomodaran)

Vs.

1. Union of India
by the Director
Indian Institute of Astrophysics
Bangalore-560034.

2. Professor Ajith Kembhavi
Chairman, Governing Council
Indian Institute of Astrophysics
IUCCA, Pune.

3. Secretary
Department of Science and Technology
Technology Bhavan
New Mehrauli Road
New Delhi-110 016.

.....Respondents

(By Advocates M/s. Sundara Swamy & Ramdas for R1 & 2)

O R D E R (ORAL)

(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN))

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

- *To issue an order to the authorities of INDIAN INSTITUTE OF ASTROPHYSICS to promote the applicant, to the post of Senior Section Officer (to grade pay of Rs.5400/-), based on the first selection, as an irregularity occurred from administration side by appointing the Administrative officer, as a member of selection committee during Apr 2014 & May 2015, who is also Reviewing officer of the applicant.*
- *To quash the tailor made second selection(Annexure A1), which was conducted to accommodate particular persons and the Liberalized third selection (Annexure-A2), violating 'norms & guidelines for screening and assessment (Annexure-A5) which was made to accommodate other four non-qualified candidates (of 10th std/PUC).*

- *To issue an order to the authorities of INDIAN INSTITUTE OF ASTROPHYSICS, to supply the copies of the ACRs pertaining to the years 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 & 2014-15 without passing any fresh 'reasons/entries' which may tantamount to tampering of evidence, for down grading the ACRs of the applicant as requested by the applicant(Annexure-A8 & Annexure-A10).*
- *To promote the applicant based on the first selection April 2014, and extend all the promotional benefits without any delay and return his honor from Apr 2014 onwards, who is going to retire in Nov, 2016.*

2. As per the details furnished in the OA and also the reply statement, the facts of the case are as follows:

The applicant joined the respondents as typist in 1984 and was appointed as Section Officer in October, 2008 in PB-2 with grade pay of Rs.4600/-. As per the existing procedure for promotion in the respondents' organisation, the required residency period for next promotion to the post of Senior Section Officer/Assistant Accounts Officer/Assistant Administrative Officer with grade pay of Rs.5400/- is five years. The promotions shall be made pursuant to the recommendation of the Assessment and Appellate Committees constituted by respondent No.1 which consisted of experts both internal and external after adopting the evaluation methodology of the Screening Committee as the criterion for promotion of persons. The applicant fulfilled the minimum eligibility criteria and hence was called for interview/assessment in April, 2014. However, he was not considered for promotion. He was again called for interview for the purpose of assessment for the year 2015 and held in May 2015. Seven persons were called for the same assessment out of which five were only PUC/10th std. candidates and hence did not fulfil the minimum required qualification. Of the remaining two, the applicant was not considered for promotion while Ms.Padmavathi who was under-graduate was promoted w.e.f. 1st Jan., 2015. Some of the persons who did not possess the minimum educational qualifications made appeal to the authorities after which the Appellate Committee was constituted and based on its recommendation, four officials were promoted to the Grade Pay of Rs.5400. According to the

applicant, in addition to it, six more candidates were also included in the final list.

3. According to the applicant, promotion is denied to him on the basis of grading in his ACR/APAR. He sought ACR/APARs for the six years period i.e from 2009-2010 to 2014-15 under RTI Act but the CPIO in his communication dated 21.8.2015 did not supply copies of the APAR but only informed the gradings according to which it was written as 'good' for the year 2009-10, 2010-11, 2011-12 and for other years 2012-13 & 2013-14, he was graded as 'fair'. He submits that the Government of India had made it mandatory vide its GO dated 14.5.2009(Annexure-A4) for furnishing copies of ACR/APARs to the individual employees with effect from the reporting period 2008-09 based on the direction of the Hon'ble Apex Court. But the same was not furnished to the applicant. The administrative officer in a communication dated 2.5.2016 informed that the Institute is yet to introduce the APAR for its staff members and therefore the question of providing copies of APAR does not arise. According to the applicant, the present Administrative Officer who was applicant's reviewing officer was responsible for downgrading his ACR/APAR to 'FAIR' to ensure that the applicant does not get promotion. He submits that he was only candidate for promotion to the grade pay of Rs.5400 in the Assessment Year April 2014 and one of the two eligible candidates out of seven who appeared in the interview held in May 2015. Hence, his denial for promotion is unfair. Moreover his request for copy of APAR, so that he can exercise his legitimate right of representing the competent authority for modification of his gradings or expunge adverse remarks in his ACR/APAR was not considered and he was denied the opportunity to represent against the adverse remarks in his ACR/APAR. Such an action on the part of the respondents is arbitrary and therefore he is entitled to the relief as sought for.

4. The respondents while giving details of the procedure adopted by them for promotion of persons says that the Assessment Committee after taking into account ACR ratings and remarks for the last 5 years, the norms and guidelines for recruitment and promotions of IIA, and the residency period in the present grade as on October 2014, recommended the status quo in the case of the applicant as he did not obtain the requisite marks to qualify for promotion and this was informed to the applicant. Though as per the norms and guidelines for assessment, a staff member who is not found fit to be promoted would normally be considered for re-assessment only after two years, considering the applicant's educational qualifications, the Director ordered a re-assessment in the next year. Accordingly, the Assessment Committee considered the case of the applicant in May 2015. Based on the total marks secured by the applicant in the assessment, he was not promoted but was only allowed one increment. They also mentioned that the applicant had requested for copy of his ACR/APAR under the RTI Act and the Central Public Information Officer(CPIO) informed him that the competent authority of IIO was guided by the provisions in OM dated 21.9.2007 of DOPT and accordingly, copies of his ACR/APAR for the period 2009-10 to 2014-15 were not supplied. However, his gradings in the ACR were informed.
5. According to the respondents, the applicant has been duly considered for promotion as per the norms and guidelines of the Assessment Committee but he was found unsuitable for promotion as he did not obtain the threshold marks. Therefore, there is no merit in the contention made by the applicant.
6. During the hearing, the Learned Counsel for the applicant emphasised on the fact that if the applicant was not found to secure the minimum threshold marks on account of ACR/APAR, then denying him copies of ACR/APAR and depriving him an opportunity to make an appeal against the adverse remarks

is grossly unfair. He referred to the DOPT OM providing for supply of ACR/APAR copies to give an opportunity to the concerned person to make representation and hence he states that the stand taken by the respondents' organisation is grossly unfair. When the persons who did not meet the eligibility criteria required for the next higher post were promoted by the Appellate Committee relaxing the norms, the legitimate right of the applicant to get copies of ACRs to make representation against the gradings was denied. Therefore, he submits that he ought to be granted relief sought by him.

7. The Learned Counsel for the respondents submits that the promotion to the next higher post was carried by the Assessment Committee. On two occasions, when the applicant was considered for assessment, he was not found to have secured the minimum threshold marks. Based on the Assessment Committee recommendation, he was only allowed one extra increment in 2015. Ld.Counsel for the respondents could not clarify the reason for not providing the copies of ACR since based upon ACR, the applicant's threshold marks were reduced and he could not get promotion. He also could not clarify as to how the Administration Officer sent a communication saying that the Institute is yet to introduce the APAR for its staff members when the CPIO had informed the gradings awarded in his ACR/APARs.
8. We have carefully considered the facts of the case and submissions made by either side. It is evident from the records and submissions made by either side that the applicant had eligibility on the basis of residency period and his educational qualification. He also appeared twice before the Assessment Committee in 2014 and 2015 but was not considered based on the gradings in APAR and personal interview. The applicant had sought copies of his ACRs

through RTI but the same was denied. Reference was made to DOPT OM dated 14.5.2009 in respect of maintenance and preparation of Annual Performance Appraisal Reports, communication of all entries for fairness and transparency in public administration. The decisions communicated by Government of India in the said OM following the judgment of Hon'ble Apex Court in Dev Dutt vs. Union of India(Civil Appeal No.7631/2002) are as follows:

- i. The existing nomenclature of the Annual Confidential Report will be modified as Annual Performance Assessment Report(APAR).
- ii. The full APAR including the overall grade and assessment of integrity shall be communicated to the concerned officer after the Report is complete with the remarks of the Reviewing Officer and the Accepting Authority wherever such system is in vogue. Where Government servant has only one supervisory level above him as in the case of personal staff attached ot officers, such communication shall be made after the reporting officer has completed the performance assessment.
- iii. The Section entrusted with the maintenance of APARs after its receipt shall disclose the same to the officer reported upon.
- iv. The concerned officer shall be given the opportunity to make any representation against the entries and the final grading given in the Report within a period of fifteen days from the date of receipt of the entries in the APAR. The representation shall be restricted to the specific factual observations contained in the report leading to assessment of the officer in terms of attributes, work output etc. While communicating the entries, it shall be made clear that in case no representation is received within the fifteen days, it shall be deemed that he/she has no representation to make. If the concerned APAR Section does not receive any information from the concerned officer on or before fifteen days from the date of disclosure, the APAR will be treated as final.

9. The above provisions clearly stipulated that the copy of the ACR/APAR should be communicated to the person concerned and he shall be given an opportunity to make representation against the entries and the final grading given in the report within a period of fifteen days from the date of receipt of the entries in the APAR. This procedure should have been followed automatically in the case of the applicant by the authorities and it does not require seeking a copy of the same through RTI. It assumed more importance when a person is considered for promotion and there is below bench mark grading. It is also surprising to note that when the CPIO informed the gradings

in the ACRs to the applicant in his communication dated 21.8.2015, the administrative officer sent a communication saying that the Indian Institute of Astrophysics(IIA) is yet to introduce the APAR for its staff members and therefore the question of providing copies of APAR does not arise. Whether it is ACR or APAR, copies of the same should have been furnished to the applicant giving an opportunity to represent to the authority for any upgradation if he considers it necessary.

10. In the present instance, we hold that the action on the part of the respondents in not providing copies of ACR/APAR or work report which was considered for promotion of the applicant, more so when it resulted in denial of promotion to him is grossly unfair. The applicant ought to have been provided an opportunity to represent against the gradings to the higher authority for an appropriate decision prior to the assessment. Therefore, the contention made by the applicant against the administrative officer who was his reviewing officer appears to have some basis, more so the administrative officer himself denies the introduction of APAR when the gradings had already been communicated.

11. On detailed consideration of the facts and circumstances of the case, we direct the respondent No.1 to provide copies of the ACRs/APARs from 2009-10 to 2014-15 to the applicant within a period of one(1) month from the date of receipt copy of this order. The applicant shall be at liberty to make representation against any gradings to the competent authority and in case such representation is made, the same shall be considered and disposed of by the competent authority after giving opportunity of personal hearing to the applicant. In the event the competent authority decides in favour of upgrading any of the ACRs/APARs, then the respondents should constitute a review committee to reassess the case of the applicant for promotion to the post of

Senior Section Officer.

12. The OA is disposed of in terms of the aforesaid direction. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

(JUSICE HARUN UL RASHID)
MEMBER (J)

/ps/

Annexures referred to by the applicant in the OA.170/00780/2016

- Annexure-A1: Letter No.IIA/Per.Div/2015 of 2.7.2015 of promotion
- Annexure-A2: Letter No.IIA/Per.Div/2015 of 24.9.2015 of promotion
- Annexure-A3: Letter No.IIA.CPIO, 2015-16, 1434 of 21.8.2016 furnishing only grading of the applicant
- Annexure-A4: GOI Office Memorandum dated 14.5.2009
- Annexure-A5: Norms & Guidelines of screening and assessment in IIA
- Annexure-A6: Refusal letter No.IIA/Estt./2016/433 of 2.5.2016 to provide ACR/APAR copies by administrative officer
- Annexure-A7: Recommendations of Appellate Committee
- Annexure-A8: Applicant's letter dated 28.3.2016 request to issue the copies of ACR/APAR
- Annexure-A9: GOI Office Memorandum dated 23.7.2009
- Annexure-A10: Letter to the Director for furnishing copies of ACR/APAR by the applicant dated 25.4.2016

Annexures with reply statement:

- Annexure-R1: Copy of the Recommendations of the Screening Committee dated 18.02.2014
- Annexure-R2: Copy of Recommendations of the Assessment Committee-April 2014
- Annexure-R3: Copy of letter dated 30.5.2014 from the applicant requesting review of his Assessment
- Annexure-R4: Copy of Office Order No.IIA.D.BBQ.4079 dated 31.10.2014
- Annexure-R5: Copy of Recommendations of the Screening Committee dated 20.2.2015
- Annexure-R6: Copy of the Minutes of the Meeting of the Screening Committee dated 26.3.2015
- Annexure-R7: Copy of Office Order No.IIA/Per.Div/Assmt/2015/70 dated 7.5.2015
- Annexure-R8: Copy of Recommendations of the Screening Review Committee dated 27.3.2015
- Annexure-R9: Copy of Office Memorandum No.IIA/Per.Div/2015/586 dated 06.05.2015
- Annexure-R10: Copy of Recommendations of the Assessment Committee in May 2015
- Annexure-R11: Copy of letter dated 02.07.2015 communicating grant of advance increment to the applicant
- Annexure-R12: Copy of the letter from the rejected candidates to respondent No.1 dated 15.07.2016
- Annexure-R13: Copy of Office Order No.IIA.D.BBQ/5050 dated 02.09.2015
- Annexure-R14: Copy of Recommendations of the Appellate Committee in September 2015
- Annexure-R15: Copy of the Order of the Director dated 22.09.2015
- Annexure-R16: Copy of the RTI Application dated 28.07.2015
- Annexure-R17: Copy of Office Order No.IIA.CPIO.2015-16.1434/2680 dated 21.08.2015
- Annexure-R18: Copy of the email dated 23.09.2015 to the applicant regarding inspection of ACRs
- Annexure-R19: Copy of RTI Application dated 21.04.2016
