

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 1199 of 2013

Date of CAV: 20.11.2018

Date of Pronouncement: 22.11.2018

Between:

T. Govind Rao, S/o. Late Ramaswamy,
Aged about 60 years, Occ: Tradesman 'G' (Retired),
Nuclear Fuel Complex, Department of Atomic Energy,
Ministry of Defence, ECIL Post Office, Hyderabad - 500 062.

... Applicant

And

1. The Union of India, Rep. by its Secretary,
Department of Atomic Energy,
CSM Marg, Anushakthi Bhavan, Bombay – 400 001.
2. BABA Atomic Research Centre,
Rep. by its Secretary, Trombay Council and TSC Section, Bombay.
3. The Chief Executive,
Nuclear Fuel Complex, ECIL Post, Hyderabad – 500 062.
4. The Administrative Officer-III,
Nuclear Fuel Complex, ECIL Post, Hyderabad – 500 062.

... Respondents

Counsel for the Applicant ... Dr. A. Raghu Kumar

Counsel for the Respondents ... Mr. V. Vinod Kumar, Sr. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

Hon'ble Mr. Swarup Kumar Mishra, Member (Judl.)

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

The OA is filed for rejecting the claim of the applicant to be promoted from Tradesman G to H based on new norms applied retrospectively and by not communicating adverse entries in the APAR in time.

2. Brief facts of the case are that the applicant joined the Respondent organisation as Tradesman in Grade-A on 1.3.1992 and retired on 31.3.2013. Respondents have introduced new norms for promotion w.e.f. 1.7.2011, according to which officials in the grade of Foreman/A, Draftsman/C, Technician /G who have completed 27 years of service and drawing grade pay of Rs 4600 would be considered for promotion to the next higher grade, if they have been in this grade for 3 years with A-1 grading for all the three years or 4 years in the said grade with A-2 grading or not less than A-3 grading for the last 4 years with 5 years service in the said grade and with B+ grading for last 4 years with six years service in the said grade of Tech G. The Respondents have promoted, based on the said norms similarly situated employees as on 1.7.2011 and again on 1.7.2012 but not the applicant. The applicant represented on 15.6.2013 but his claim was rejected by the respondents vide lr.dt. 29.6.2013. Aggrieved by the same, the OA is filed.

3. The main contention of the applicant is that communicating the adverse entries in the APAR after the DPC does not serve any purpose and is bad in law. Denying a promotion by doing so is unfair. The applicant has been awarded the Prime Minister's Shramveer Award in the year 2005 and being meritorious in rendering service it is not known as to how lower gradings were given to him. New norms introduced should be applied prospectively. Adverse entries which were not communicated at the time of consideration for promotion should be ignored.

4. Respondents resist the claim of the applicant stating that he did not have the requisite grading while being considered for promotion as on 1.7.2011 and 1.7.2012 and therefore cannot be promoted. Not only APAR grading but also performance of the candidate during the interview is considered to promote an

employee. The new norms were not altered to the disadvantage of the applicant. The motive of the new norms was to promote employees who have put in long years of service. As the applicant could not meet the relaxed norms he was not promoted.

5. Heard the learned counsel and perused the documents on record. Ld counsel for the applicant has urged that applying new norms with retrospective effect and rejecting promotion without communicating adverse entries is arbitrary and irregular. Ld counsel for the respondents vigorously contested the same by stating that employees without required grading as per norms are ineligible for promotion and that the action of the Respondents is as per norms.

6. Based on careful evaluation of facts, it is seen that the Respondents introduced new norms for promotion from Tech.G to the next higher grade. It was introduced to elevate employees who have put in long years of service in the grades cited supra. While appreciating the initiative taken by the Respondents, it is necessary that the law of the land is followed. The Respondents have bench marked the grading in APAR to be eligible for promotion as per the new policy. Hence any grading which is below the bench mark would be treated as an adverse grading. The rules are clear that any grading which is below the bench mark adversely effecting the career/ promotion of an employee has to be communicated before he/she is considered for promotion. If it not, such a grading is invalid as per law. The basic premise of the Principles of Natural Justice is that one has to be heard before he is condemned. The reason is that the version of the employee once heard would help in taking a balanced view on an issue. In the present case new norms in regard to APAR have been laid to promote the employees but before applying them retrospectively, the employees who are likely to be put to disadvantage should have been heard in respect of the

lower grading given to them which mars their promotion. The other possible way was to apply the rules with prospective effect so that there could be no ground for grievances and employees would have been motivated to prepare themselves as per the new norms. As can be seen from the records, in respect of the applicant, the grading for the period 1.07.2010 to 30.6.2011 was communicated on 11.11.2011 and for the period 1.7.2011 to 30.6.2012 on 9.10.2012 whereas the promotions were effected on 1.7.2011 and 1.7.2012 respectively. Thus the adverse grading were informed to the applicant after the relevant dates of consideration and on effecting promotions to similarly placed employees. Possibly if the adverse grading were communicated to the applicant, then on representation the competent authority could have upgraded them based on the grounds that the applicant could have put forth. More so, when the issue pertains to promotion. Such an approach has not been adopted by the Respondents. May be, they were too eager to grant promotions, which is welcome, but glossing over the repercussions which follow consequent to not following the law is unacceptable. DOP&T has time and again laid emphasis on the need to communicate adverse grading to avoid employee grievances. The rules are clear on this as laid out by DOP&T in OM dt. 31.01.2014 which are to be followed by the Respondents.

7. Being on the subject it is pertinent to draw the attention of the Respondents to the observations of Honourable Supreme Court in *Dev Dutt Vs. Union of India & Others, (2008) 8 SCC 725*, wherein it has been held as under:

“13. It has been held in Maneka Gandhi vs. Union of India & Anr. AIR 1978 SC 597 that arbitrariness violates Article 14 of the Constitution. In our opinion, the non-communication of an entry in the A.C.R. of a public servant is arbitrary because it deprives the concerned employee from making a representation against it

and praying for its up-gradation. In our opinion, every entry in the Annual Confidential Report of every employee under the State, whether he is in civil, judicial, police or other service (except the military) must be communicated to him, so as to enable him to make a representation against it, because non-communication deprives the employee of the opportunity of making a representation against it which may affect his chances of being promoted (or get some other benefits). Moreover, the object of writing the confidential report and making entries in them is to give an opportunity to a public servant to improve his performance, vide State of U.P. vs. Yamuna Shankar Misra 1997 (4) SCC. Hence such non-communication is, in our opinion, arbitrary and hence violative of Article 14 of the Constitution.

14. In our opinion, every entry (and not merely a poor or adverse entry) relating to an employee under the State or an instrumentality of the State, whether in civil, judicial, police or other service (except the military) must be communicated to him, within a reasonable period, and it makes no difference whether there is a bench mark or not. Even if there is no bench mark, non-communication of an entry may adversely affect the employee's chances of promotion (or getting some other benefit), because when comparative merit is being considered for promotion (or some other benefit) a person having a 'good' or 'average' or 'fair' entry certainly has less chances of being selected than a person having a 'very good' or 'outstanding' entry. “

The said judgment fully covers the case. The reasonable period spoken of would imply communicating the adverse grading before considering the applicant for promotion. Any entry has to be communicated and in the present case the moot point is the grading was adverse impacting the promotion of the applicant. Therefore it was all the more necessary on part of the respondents to communicate the same before deciding his promotion. In regard to performance, it is on record that the applicant has got Prime Minister's award of SHRAVEER. The Respondents have also not placed on record that the applicant is not eligible for reasons other than the lower grading. Neither was the applicant under the cloud of any disciplinary action. An employee with such credentials eagerly looking forward for a promotion and that too after 27 years, when an opportunity was created by the Respondents, is but natural. Denying the same

to the applicant without giving room to defend is definitely disappointing to say the least and against the established Principles of Natural justice. Respondents claiming that the applicant was aware of the lower grading of B+ as per his representation dt 15.6.2013 is agreed to, but the fact that remains undisputed is that the lower grading was let known to the applicant after the promotions were effected to similarly placed employees violating the basic rules governing adverse entries and the law laid down by the Honourable Supreme Court as quoted above. The balance of convenience tilts towards the applicant. The respondents erred in following law and the rules. Therefore the action of the Respondents is against rules, arbitrary, unreasonable and illegal.

8. Therefore the OA fully succeeds and the Respondents are directed to consider:

- i) Promoting the applicant on a notional basis as on 1.7.2011 to the next higher Grade Tradesman H, by ignoring the two adverse A-2 gradings which were not communicated to the applicant, along with similarly situated employees who were promoted from the said date.
- ii) Re-fixing the pension of the applicant based on (i) above, since the applicant has retired. Revised pension be paid from the month of Dec 2018 onwards. No back wages from the date of notional promotion nor arrears of pension from the date of retirement need to paid.
- iii) Time allowed to implement the order is 3 months from the date of receipt of the order.

8. In the result, the OA is allowed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 22th day of November, 2018

evr