

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

O.A. No.021/00621/2015

Date of CAV:05.02.2018.

Date of Order :13.03.2018.

Between :

G.B.Devikar, s/o B.M.Devikar,  
Occ:Sub-Officer/D, EC.No.5402,  
Fire Service, NFC, r/o Flat No.V-8,  
Veenus Apartment, S.P.Nagar,  
Moulali, Hyderabad-500 040.

... Applicant

And

1. UOI, rep., by its Secretary, M/o Atomic Energy,  
Central Secretariat Buildings, New Delhi.
2. The Chairman, Atomic Energy Commission &  
Secretary, Dept. Of Atomic Energy,  
Anushakthi Bhavan, CSM Marg, Mumbai-400 001.
3. The Chief Executive, Saradhi Building,  
Nuclear Fuel Complex, Dept. Of Atomic Energy,  
Govt. of India, ECIL Post, Hyderabad-500 062.
4. The Dy.Chief Executive (Admn.),  
ADHAR Building, NFC, Dept. Of Atomic Energy,  
Govt. of India, ECIL Post, Hyderabad-500 062.
5. Chief Administrative Officer, Adhar Building,  
NFC Dept., ECIL Post, Hyderabad-500 062.
6. Liaison Officer for SC/ST, Adhar Building,  
NFC Dept., ECIL Post, Hyderabad-500 062.
7. The Administrative Officer- (Rectt./III),  
Adhar Building, NFC Dept., ECIL Post,  
Hyderabad-500 062.
8. The Dy.Chief Fire Officer, Fire Service Division,  
NFC, Hyderabad-500 062.

9. The Chairman, National Commission for Scheduled Caste and Scheduled Tribe (SC/ST), Lok Nayak Bhavan, Khan Market, New Delhi-110 003.

... Respondents

Counsel for the Applicant ... Mr.R.Mahanty

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

**CORAM:**

**THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)**

**THE HON'BLE MRS.MINNIE MATHEW, MEMBER (ADMN.)**

**ORDER**

{ As per Hon'ble Mrs.Minnie Mathew, Member (Admn.) }

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

*“(a) To promote the applicant to the grade of Sub-Officer/D with effect from 01.07.2010 by revising the CR/APAR as “A+” by taking into consideration of 1) the “Letter of Appreciation” & a “Certificate of Recognition” 2) by giving one year advantage as the petitioner is with Station Officer Certificate, and 3) by taking into consideration of Annexure-I, Guidelines for Promotion of SC/ST by implementing the reservation policy under Art.16 (4A) of the Constitution of India with all consequential benefits.*

*(b) to furnish the seniority list of Sub-Officer/Station Officer/Divisional Officer in all grades of each category with roster points reservation in accordance with Article 16 (4A) with consequential seniority as per the 85<sup>th</sup> Constitutional Amendment Act with effect from 17.06.1995.*

*(c) to punish the respondent No.3 for submitting false information to the Hon'ble Tribunal and to the Hon'ble High Court in respect of the Recruitment Rules for Station Officer in OA.No.380 of 2007, even though the rules are very much available with the NFC/DAE and not furnishing the Recruitment Rules to Court and submitting false information is illegal, arbitrary, bad in law and violative of Articles 14 and 21 of the Constitution of India and Contempt of Court, the OA may please be re-opened in the interest of justice.*

*d) pass such other order or orders as this Tribunal may deem fit and proper in the circumstances of the case and interests of justice or otherwise the applicant will be put to irreparable loss and injury.”*

2. The undisputed facts of the case are that the applicant was initially recruited as Sub-Officer -A on 25.05.1993 and subsequently promoted to the higher grade of Sub-Officer-B with effect from 01.08.2000 and Sub-Officer-C with effect from 01.08.2005. The post of Sub-Officer in Fire services in the respondent department is categorized as Technical and the recruitment/promotion of Scientific and Technical staff are governed by the Merit Promotion Scheme of the Department of Atomic Energy and are delinked from the availability of vacancies. The promotion under the Merit Promotion Scheme is granted on the basis of merit and performance of the individual officer during the prescribed residency period in the lower grade. The fitness for promotion under the Merit Promotion Scheme is assessed on the basis of the APAR grading of the employee, during the prescribed eligibility period, his domain knowledge, his record of work and performance in interview etc. In the case of SC/ST employees, relaxation is granted for APAR gradings.

3. The applicant's case is that he acquired additional qualifications such as Station Officer's & Instructors Course during the year 2001 and the Divisional Officer's Court during the year 2012. In addition to the above qualifications, he acquired B.Sc Degree through Distance Education and stood first in the Physical Endurance & Commend Test conducted by the department for the post of Station Officer-A during the year 2007. He has also exhibited distinguished performance in a fire accident at ECIL, Hyderabad, on 19.06.2009 and was awarded a letter of appreciation along with a Certificate of Recognition by the Chief Executive, Nuclear Fuel Complex, Hyderabad on 7.10.2009. Further, he used to perform the duties of Station Officer/DCFO/C, Fire Service, whenever necessary for a short period.

4. It is the contention of the applicant that for promotion from the post of Sub-Officer-C to Sub-Officer-D, the APAR gradings pertaining to four annual reports immediately preceding the date of the promotion proposal had to be taken into

consideration. The guidelines for promotion of Sub-Officer without Station Officer's Certificate stipulate minimum eligibility period of six years with four A-1 grading, 7 years with four A-2 grading, 8 years with four A-3 grading and 9 years with four B+ grading. The six years APAR gradings from 2005-06 to 2010-11, should have been considered for the promotion year 2010-11. Further, since he is having Station Officer Certificate, he could also be promoted from 01.07.2010. Further, persons, who have shown distinguished performance, can be awarded promotions by relaxing the standards and awarding highest grade of A+. Hence, it is contended by him that he should be promoted with effect from 01.07.2010, for his professional performance in a Fire accident at ECIL, Hyderabad, on 19.06.2009.

5. The applicant has also submitted that the Annexure.A-1 letter dated 14.08.2014 forwarded by the Under Secretary of the Department of Atomic Energy to the Assistant Director, National Commission for Scheduled Tribes, is illegal, arbitrary and alleged that the Under Secretary has made incorrect and misleading statements.

6. In a nutshell, the case of the applicant is that his case for promotion should have been reviewed by upgrading his Confidential Reports (CRs)/Annual Performance Appraisal Reports (APARs) for the year 2010 by awarding grading of A+ and that he should have been given one year advantage on account of the Station Officer Certificate acquired by him and that being a member of the ST community, he is entitled for special relaxations which would entitle him to be promoted as Sub-Officer-D with effect from 01.07.2010 with all consequential benefits. He also submits that the respondents by not following the policy for reservation in promotion had violated Articles 14, 16 and 21 of the Constitution of India. He has challenged the Annexure.A-3 orders dated 19<sup>th</sup> March, 2015 in which his prayer for promotion to the grade of Sub-Officer-D with effect from 01.07.2011 instead of 01.07.2014 has been rejected by the respondents.

7. The respondents have filed a reply statement stating that the applicant had completed only 5 years as on 01.07.2010 and was therefore not in the zone of consideration for promotion with effect from 1.7.2010. As per the norms of 2009, the Minimum Eligibility Period (MEP) for promotion from the grade of Sub-Officer-C to Sub-Officer-D was 8 years. The norms were revised from 2011 wherein the minimum eligibility period was reduced from 8 years to 6 years. Hence, the applicant is coming in the zone of consideration for promotion with effect from 01.07.2011. However, as per the required gradings of four A1 grading for general candidates, the requirement of grading for SC/ST candidates was two A-1 and two A-2 gradings. However, the applicant was having only one A-1 grading and three A-2 gradings. Hence, his case was screened out.

8. The respondents point out that after a lapse of 5 years, the applicant is now requesting for upgrading the grading of 2009-10 from A2 to A1 based on a mere appreciation letter. It is submitted by the respondents that this request is totally unjustified and against the rules and he cannot be considered for promotion with effect from 01.07.2010. It is further submitted that the applicant's case was screened for promotion with effect from 01.07.2011, but he did not appear for the personal interview. Although he was called for interview for promotion with effect from 01.07.2012 and 01.07.2013, he did not appear for the personal interview. Thus, he himself is responsible for his non-promotion with effect from 01.07.2012 and 01.07.2013 when he became eligible to be considered for promotion. In 2014, he attended the interview for promotion and was found fit and was accordingly promoted to the grade of Sub-Officer-D with effect from 01.07.2014. As regards his claim for appointment to the post of Station Officer-A on direct recruitment against an advertisement in 2006, it is pointed out that he has challenged the selection process

before this Tribunal in OA.No.380/2007 and that this Tribunal had refused to interfere with the selection process. He again applied against direct recruitment for the post of Station Officer and was called for Physical Endurance Test and interview on 28.04.2012, but he did not attend the selection process. As the applicant was not meeting the norms for promotion with effect from 01.07.2010 and 01.07.2011 and as he did not attend the interview for promotion to the post on 01.07.2012 and 01.07.2013, he has no claim for promotion with effect from 01.07.2010 onwards. The respondents also submit that the promotions in the department are covered by Merit Promotion Scheme, which is not linked to the availability of vacancies. Hence, there is no reservation in promotion. However, relaxation in APAR gradings is extended to SC/ST candidates. Further, rosters are maintained for direct recruitment posts and reservation is extended to all the posts up to the lowest rung of Group-A. The respondents also point out that the grading awarded for the year 2009-10 was also communicated to the applicant, which has been accepted by him. The APAR grading A-2 awarded for the period 2009-10 cannot be reviewed at this stage.

9. The respondents also state that the APAR gradings are awarded based on the performance of the employees exhibited throughout the year and not based on any one single incident of exemplary performance. His grading for the year 2009-10 cannot be upgraded from A2 to A1 based on the appreciation letter dated 7.10.2009 since the grading has been decided by the Reporting, Reviewing and Accepting authorities. As such, the relief sought is in violation of the promotion norms.

10. The applicant has filed a rejoinder again reiterating the averments in the OA that he deserves A1 grading in 2009-10 on account of his meritorious

performance in a hazardous situation for which he has been awarded letter of appreciation. He has also stated that the respondents have erred in holding that the reservations shall be implemented in accordance with vacancy based roster. However, the Hon'ble Supreme Court has decided in the case of *R.K.Sabharwal vs. State of Punjab* and also *J.C.Mallick vs. Ministry of Railways* that the reservation of jobs for the backward classes and SC/STs should apply to the post and not to vacancies. Hence, in the light of the aforesaid dictum, the respondents should follow the rule of reservation in promotions in the light of the constitutional provisions under Article 16 (4) (A) and 4 (B). The applicant has also contended that in the light of this judgment, there is no need to search for a new post and the post occupied by the SC/ST itself is required to be upgraded. It is also submitted that the respondents while enforcing promotions, should maintain 15% and 7 1/2% in the yearly or half yearly promotional panel for SC/ST communities and that no vacancy/post is required for implementation of post based roster in Merit Promotion Scheme and the post occupied by the applicant is simply required to be up graded.

11. The respondents have filed an additional reply stating that there is no post based roster reservation in merit promotions in the Department of Atomic Energy and that there is relaxation in APAR gradings for SC/ST employees in one step below in comparison with the general candidates in promotion cases.

12. Heard the learned counsel on both sides and perused the record.

13. The learned counsel for the Applicant has produced a letter written by one Chief Administrative Officer & Liaison Officer for SC/STs, which states that the applicant

deserves to be promoted to the grade of Station Officer with effect from July, 2007 onwards and that he should have been promoted to the grade of Sub-Officer-D in 2011 because he was fulfilling the norms of the post. Further, his CR grading from 2007-08, 2008-09 and 2009-10 was A2 (Very Good) and 2010-11 was A1 (Outstanding). As per the existing norms for Sub-Officer-C to Sub-Officer-D, one should have a residency period of 6 years in the grade of Sub-Officer-C and two A1+ two A2 APAR gradings.

14. The issues that fall for consideration are -

- i. Whether the applicant has a case for promotion as Sub-Officer-D with effect from 1.7.2010 by revising his CR as A+ by taking into consideration the letter of appreciation and Certificate of Recognition given in 2009-10.
- ii. Whether the applicant is entitled to the benefit of the policy of reservation in promotions.

15. From the material on record, it is seen that the applicant has admittedly received and acknowledged his ACR forms for the period from 1.7.2009 to 30.6.2010 and has filed the same as Annexure.A-17. The applicant has been graded as A2/Very Good. The assessment of the Reporting Officer has been endorsed by the Deputy Chief Executive and also by the Chief Executive. His contention that he ought to have been given A1 grading for his performance during 2009-10 should have been represented to the competent authority by filing an appeal within the stipulated time against the general remarks/grading against the individual attributes/the final grading. The applicant has not produced any material to show that he has filed any appeal against the grading given to him in 2009-10. Therefore, it has to be held that the applicant has not filed any such appeal and has approached this Tribunal after a lapse of 5 years praying for a direction to the respondents to upgrade his APAR grading for the year



2009-10 based on a letter of appreciation and certificate of recognition. Without filing any appeal at the relevant time, there is no justification for considering the prayer for upgradation of his ACR grading for 2009-10. Further, merely on the basis of a letter of appreciation, the applicant is not justified in seeking revision of his ACR grading to A1. Thus, the applicant has failed to establish any justification for his prayer to promote him to the grade of Sub-Officer-D with effect from 1.7.2010 by revising his CR/APAR grading as A+.

16. Even otherwise as per the promotion norms in force in 2009 the minimum eligibility period for promotion from Sub-Officer-C to D is 8 years and the applicant who has been promoted as Sub-Officer-C on 1.8.2005 and who has about 5 years of service as Sub-Officer-C would not have come within the zone of consideration in 2010. Further, even if one year advantage is given on account of Station Officers Certificate, the applicant still would not have come within the zone of consideration in 2010.

17. We also observe that in his representations to the respondent department, he has been seeking for promotion to the grade of Sub-Officer-D in 2011 on the ground that he was fulfilling the norms for the said post. However, in this OA, he is praying for promotion with effect from 01.07.2010, without making such a prayer before the respondent-authorities. On this ground also, the first issue is answered against the applicant.

18. As regards his contention that he is entitled to the benefit of the policy of reservation in promotions, we note that the applicant has himself admitted that the post of Sub-Officer is categorized as Technical and that promotions are being

governed by the Merit Promotion Scheme. To put it succinctly, under the Merit Promotion Scheme, promotions are not with respect to a post being available in the higher grade. For this reason such promotions have been delinked from the availability of vacancies and are without reference to vacancies. For being considered for promotion under the Merit Promotion Scheme, the eligible employees are first screened in by the Screening Committee and are subjected to a process of assessment and interview by a Standing Selection Committee. Deserving candidates are then recommended for promotion based on their APAR gradings, recommendations of the concerned Division, as well as their performance in the interview. When a promotion is not on seniority and when the promotion is not connected to any particular vacancy, the maintenance of post based roster reservation in promotions will not arise. At the same time, we note that there is a special consideration for SC/ST employees even under the Merit Promotion Scheme inasmuch as SC/ST employees are required to have only two A1 and two A2 gradings as against four A1 gradings for the general candidates.

19. We are also not inclined to accept the contention that in Merit Promotion Scheme, the post occupied by an employee is simply required to be upgraded. The Merit Promotion Scheme available in Scientific Departments like the present respondent department is distinct from the normal promotion schemes, which take into consideration seniority, fitness etc.,. In the Merit Promotion Scheme, the promotions are ordered after a rigorous process of screening and interview. Hence, any promotion given under this scheme cannot be treated as a mere upgradation of a post held by an employee.

20. In this view of the matter, we find no merit in the contention of the applicant that he being a Scheduled Tribe candidate is entitled to the policy of reservation while implementing the Merit Promotion Scheme.

21. The applicant has also prayed for punishing the 3<sup>rd</sup> respondent for submitting false information to this Tribunal and to the Hon'ble High Court in O.A.No.380/2007. Such a prayer in this OA is clearly not maintainable and is accordingly rejected.

22. The applicant has at length ventilated his grievances against Annexure-I report sent by the Under Secretary, Department of Atomic Energy dated August 14, 2014 to the Assistant Director, National Commission for Scheduled Tribes and has emphatically submitted that the Under Secretary's contentions in the said report are incorrect and misleading and amounts to harassment. He has also impugned this letter as an order. As this is only a report sent from the respondent department to the National Commission for Scheduled Tribes and does not constitute an order, no challenge lies against Annexure-I report. Therefore, we are of the view that it is not necessary to give any finding on the issues raised by the applicant with reference to Annexure.A-1 report dated August 14, 2014.

23. In the result, we hold that the OA is devoid of merit and is liable to be dismissed. Ordered accordingly. No costs.

**(MINNIE MATHEW)**  
MEMBER (ADMN.)

**(JUSTICE R. KANTHA RAO)**  
MEMBER (JUDL.)

Dated: this the 13th day of March, 2018

Dsn.

