

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

Original Application No.973 of 2013

Reserved on: 25.10.2018

Order pronounced on: 26.10.2018

Between:

M.S. Devikar, S/o. Shiva Charan Devikar,
Aged about 59 years, Occ: Chief Conservator of Forests (Wild Life),
O/o. Principal Chief Conservator of Forests
(Head of Forest Force), Aranya Bhavan, Hyderabad.

...Applicant

And

1. Union of India, Rep. by its Secretary,
Ministry of Environment and Forests,
Paryavan Bhavan, CGO Complex,
Lodhi Road, New Delhi – 110 003.
2. The State of Andhra Pradesh,
Rep. by the Chief Secretary,
General Administration Department,
Secretariat, Hyderabad.
3. The Principal Chief Conservator of Forests.
(Head of Forest Force), Aranya Bhavan,
Saifabad, Hyderabad.

...Respondents

Counsel for the Applicant	...	Dr. A. Raghu Kumar
Counsel for the Respondents	...	Mrs. K. Rajitha, Sr. CGSC for R-1 Mr. Ch. Srinivas for RR 2 & 3.

CORAM:

<i>Hon'ble Mr. B.V. Sudhakar</i>	...	<i>Member (Admn.)</i>
<i>Hon'ble Mr. Swarup Kumar Mishra</i>	...	<i>Member (Judl.)</i>

ORDER

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

The OA is filed for not promoting the applicant to the super time scale of
Rs 67000-79000 in Indian Forest Service.

2. Brief facts of the case are the applicant belongs to the 1987 batch of
Indian Forest Service and over the years has been promoted to the rank of Chief

Conservator of Forests (CCF)(Production) in 2010 and worked in the said rank till he retired on 31.7.2013. The 1987 batch IFS officers in the rank of CCF were considered for Super Time scale of Rs 67000-79000, but the applicant was not granted the same and hence the present OA.

3. The contention of the applicant is that having come to know that he was not granted the super time scale, he made a representation on 2.3.2013 and there being no response obtained details through RTI on 25.3.2013 which revealed that the DPC considered him for promotion and found him unfit, though he was not communicated any adverse remarks and nor any disciplinary action was pending action against him. On further enquiries it was revealed that his case could not be considered for want of CRs for the periods 2005-06,2006-07 and 2011-12. The applicant claims that he has submitted the CRs to the reporting officer but they were not sent to the reviewing officer for reasons best known to the reporting officer. The applicant again submitted the copies of the missing CRs on 27.5.2013 and based on his representation the 3rd respondent directed the concerned to complete the related process. The applicant's main grievance is that the non initiation of the ACRs is not his fault and hence he should not be penalised. Even before his retirement on 31.7.2013, he made a representation on 26.7.2013 but of no avail.

4. The respondents inform that the Screening Committee which met on 1.12.2012 found him unfit based on the CR gradings given hereunder and also as per the G.O.I guidelines dt 18.3.2002 read with lr dt 22.12.2010.

S. No.	Year	Grading/ Remarks
1	1.4.2005 to 31.3.2006	Not Received
2	1.4.2006 to 31.3.2007	Not Received
3.	1.4.2007 to 10.6.2007	Not received
4.	11.06.2007 to 31.3.2008	Average
5	1.4.2008 to 30.09.2008	3/10

6	1.10.2008 to 31.1.2009	4/10
7	1.1.2009 to 31.3.2009	4/10
8	1.4.2009 to 31.3.2010	5/10
9	1.4.2010 to 13.7.2010	6/10
10	14.7.2010 to 31.3.2011	5/10
11	1.4.2011 to 31.3.2012	Not received

The competent authority has approved the minutes of the screening committee on 24.1.2013 and accordingly G.O dt 811 was issued promoting eligible officers of 1987 batch. The CRs for the period 2005-06 & 2006-07 were forwarded to the GOI on 20.8.2013 and the PAR were communicated to the applicant on 23.7.2013 for comments. However the applicant has retired on 31.7.2013.

5. Heard the learned counsel and perused the documents on record.
6. The CRs of the applicant do reveal that they are below the bench mark and are adverse. However, these adverse gradings and the reasons thereof have not been have not been communicated to the applicant. As per the DOPT rule every adverse entry/ below bench mark grading has to be communicated to the employee so that he has an opportunity to represent and also to rectify and improve his performance. Without communicating the adverse remarks and denying the promotion to an employee is not only against rules but it is also against the principles of natural justice. In fact, Hon'ble Supreme Court has clearly stated so 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. “

7. Further DOPT vide its OM No.22011/5/86- Estt.(D) dated 10.4.1989 has given elaborate instructions in regard to maintenance of confidential rolls and evaluation of CRs. Primarily the clauses relevant to the present case are given hereunder:

“Consideration of CRs for – (a) For promotion – Confidential Rolls are the basic inputs on the basis of which assessment is to be made by each DPC. The evaluation of CRs should be fair, just and non-discriminatory. Hence -

(a) The DPC should consider CRs for equal number of years in respect of all officers considered for promotion subject to (c) below.

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(c) Where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if in any case even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per (b) above. If this is also not possible, all the available CRs should be taken into account.

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(e) The DPC should not be guided merely by the overall grading, if any, that may be recorded in the CRs but should make its own assessment on the basis of the entries in the CRs, because it has been noticed that sometimes the overall grading in a CR may be inconsistent with the grading under various parameters or attributes. “

The DOPT instructions clearly state that when CRs are not written for a particular period then CRs of preceding period should be considered and if even this is not possible, then available CRs should be taken into consideration. It was also stated that the DPC should not be guided by the overall grading, but it should make its own assessment. However, the DPC while making an assessment does also look into the fact whether the adverse entries were communicated and if so what was the outcome. No such exercise appears to have been done in case of the CRs of the applicant. Hence, the action of the respondents in not considering the promotion of the applicant to Super Time Scale is illegal and against rules. One more fact we have observed is that the applicant was communicated adverse remarks for the period from 3.6.2011 to 31.3.2012 on 23.7.2013 i.e. just 8 days before his retirement. Such action of the respondents does not reflect fairness. However, as the applicant has retired it would be in the fitness of things to give him an opportunity to represent against the adverse entries made so that ends of justice are met.

8. Therefore, based on rules quoted and the well settled principle of law in this regard, the respondents are directed to consider:

- (i) to communicate the adverse remarks to the applicant forthwith and he should be permitted to make representation within 15 days on being communicated the adverse remarks praying for upgradation.

- (ii) In case the upgradation is allowed, the applicants candidature may be placed before a Screening Committee for considering his case for promotion to the Super Time Scale on notional basis from the date his juniors were promoted and upon such promotion, his pensionary benefits be revised, the arrears thereof be worked out and paid due to such refixation of pension.
- (iii) Time calendared to implement the order is six months from the date of receipt of this order.

9. In the result, the OA is allowed. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

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

Dated, the 26th day of October, 2018

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