

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.202/00119/2017

Jabalpur, this Wednesday, the 16th day of May, 2018

**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Dr. K.S.Pandey, S/o Late Shri Ram Jass Pandey,
Aged-63 years, Occupation-Pensioner, R/o R-9, Sarika Nagar,
Thathipur, Near BVM College, Gwalior-474011(Last employed as
Technical Officer 'C' in Defence R&D Establishment (DRDE),
Jhansi Road, Gwalior-474002 **-Applicant**

(By Advocate –**Shri U.K.S.Chouhan**)

V e r s u s

1. Union of India, (through Secretary, MoD)
Ministry of Defence, Govt. of India, 101,
South Block, New Delhi-110011
2. Chairperson, Defence, R&D Organization,
DRDO Bhawan, Rajaji Marg, New Delhi-110105
3. Director, Defence Research & Development Establishment,
(DRDE), Jhansi Road, Gwalior-474002
4. Director, Centre of Personnel Talent Management
(CEPTAM), Metcalf House, Delhi-110054

-Respondents

(By Advocate –Shri Akshay Jain along with Shri Sudhanshu Dhar Yadav Sr. Administrative Officer, DRDE Gwalior)

(Date of reserving the order:- 10.05.2018)

ORDER

By Navin Tandon, AM:-

The applicant who superannuated on 31.12.2013 as Technical Officer 'C' with Defence Research & Development

Establishment (DRDE), is aggrieved that he was not promoted as Technical Officer 'D' with effect from 01.09.2013. Hence he has filed this Original Application.

2. This O.A. has been filed on 10.02.2017. Hence M.A. No. 202/00098/2017 was filed for condonation of delay. The respondents have not raised any objection.

3. The following relief has been sought for by the applicant in this Original Application:-

“8. Relief Sought :

(a) Respondents may please be directed to upgrade/promote the applicant to the next higher grade of Technical Officer 'D' with effect from 01.09.2013 with financial effect from the same date.

(b) To award cost of the proceedings.

(c) To provide any other relief in favour of the applicant as deemed fit by this Hon'ble Tribunal in the facts and circumstances of the case.”

4. The applicant has submitted that he was called for assessment by the Assessment Board for promotion to Technical Officer 'D' on five successive occasions in the year 2009 to 2013, but was declared failed without disclosing any reasons.

4.1 The applicant further states that he was shown more than 90% marks in his APARs for last four years (not communicated completed APAR with final grading). Officers junior to him, like Shri P.C. Jatav, Technical Officer 'C' was promoted unfairly,

whose measurable overall performance was lower than the applicant, Hence, APAR marks are not given objectively.

4.2 The applicant avers that he was never communicated actual marks awarded by Assessing Officer, Reviewing Officer and final marks awarded by Accepting Authority for the year 2003 to 2012. His performance during 2012 was outstanding and was awarded 86 marks by Accepting Authority. On having represented vide letter dated 19.02.2013 (Annexure A-3), he was verbally assured by respondent No.3 that his marks would be increased to 90. Since he was not happy with score of 90, he requested respondent No.3 to allow him to represent his case before the competent authority i.e. Apex Standing Committee on DRTC APAR Representation (ASCODAR). But respondent No.3 did not take any action on his above said representation as envisaged as per part VII (A) of APAR form which required decision of ASCODAR. It is now confirmed that respondent No.3 has not referred his representation to the said standing committee as applicant was not communicated final score after report of the Apex Standing Committee as required vide Part VII (B) Part (ii).

4.3 It is the case of the applicant that since he was not communicated any grounds for his successive failures by Assessment Boards, he sought information on 24.09.2013 under

RTI Act (Annexure A-5). Respondent No.4 provided him information on 28.10.2013 (Annexure A-6). Unhappy with the required information, he submitted appeal to First Appellate Authority and then to Central Information Commission. However, no further information was furnished to him as per section 24 of the RTI Act.

4.4 The applicant has submitted another representation dated 14.01.2017 (Annexure A-9), which is still pending with the respondents.

5. The respondents in their reply have averred that APAR's of every year has been shown to the applicant and his signatures have been obtained on the same, which are on records. The case of the applicant was considered by Central Assessment Board (CAB), as per rules, and the applicant on the basis of all India merit could not be promoted.

5.1 Respondents further submit that promotion under the merit based limited flexible complimenting scheme where even a junior can supersede senior. In this system, the merit as decided by average APAR marks of the individual and his/her performance in the assessment board is the basis of promotion. Final promotion is based on all India merit.

5.2 The respondents states that no representation was made by the applicant for his APAR from 2009 to 2011. The final grading of 2012 was revised upward from 86 to 90 based on the representation of the applicant dated 19.02.2013 (Annexure A-3). The same has not been challenged by the applicant after review of his marks.

5.3 The representation of the applicant dated 14.01.2017 (Annexure A-9) has been disposed of by respondents on 21.06.2017(Annexure R-4) being time barred.

6. At the outset we find that the applicant has not given any convincing reason for approaching this Tribunal more than three years after his superannuation. Therefore, the case is barred by limitation.

7. Further, we heard both the parties and pleadings available on record. Shri Sudhanshu Dhar Yadav, Senior Administrative Officer-II of the respondent department was available to assist the court. As directed in the hearing on 11.01.2018, the APARs of the applicant was brought in sealed cover by the respondents.

8. Our decision based on merit of the case is given in following paragraphs.

9. It is seen that the respondents in their letter dated 28.10.2013 (Annexure A-6) have communicated the interview marks and

average total (Interview and APAR average) of the applicant for all the five years, viz assessment years 2009, 2010, 2011 2012 & 2013, when he was considered for promotion to Technical Officer 'D'. The cut off marks for promotion to Technical Officer 'D' are also given. In each of the five years, his marks are less than the cut off marks. In fact, on three occasions, he could not qualify through criteria for merit list. On other two occasions, he could not secure marks higher than that of last FIT candidates. Hence, it is clear that his case was considered, but not considered fit for promotion.

10. It is observed that the applicant has referred to his several verbal appeals and verbal assurance of respondent No.3. Since no documentary evidences has been submitted, no cognizance of such verbal assurance can be considered.

11. Further, the applicant is aggrieved by the fact that his representation dated 19.02.2013 (Annexure A-3) against APAR grading of 2012 was not considered by ASCODAR.

11.1 A perusal of the blank APAR form (Annexure A-2) shows that Final Grade (%) are given in Part VII (B). It has two parts- Part (i) if there was no representation and part (ii) if there was a representation.

11.2 The completed APAR of the applicant for 2012 (brought by the respondents) was perused by us and it is seen that the applicant

has signed in part (i)- if there was no representation. It is also seen that the Accepting Authority has changed his grading from 86 to 90.

11.3 The applicant on page 8 of APAR has signed below the remarks “I have seen the complete report.”

11.4 The contents of the representation of the applicant dated 19.02.2013 (Annexure A-3) are as under:-

“With due respect and humble submission, I submit my grievances related to the marks given to me by your good self. While seeing the ACR marks on dt. 18.2.13, in Director’s secretariat, I got disappointed after perusal of the ACR marks.

I believe that on the basis of my performance I should have been given even better marks than already given by IO & RO.

Though I have signed in my ACR as suggested but I have decided to represent my case. Therefore, I may please be allowed to represent my case before the Competent Authorities.”

11.5 Annexure A-3 submitted by the applicant has the following hand written remarks written by the applicant himself :-

“After representation submitted to Director on said date, Director called me and told that your original ACR marks i.e. 86 has been increased to 90. Although, I had tried to convinced to Director that 90 marks will not help me in my promotion as other labs are giving marks to their candidates above 95.”

11.6 From the above, it is clear that the applicant was aware that the Accepting Authority has modified his own assessment from 86 to 90. Further to this, he has not given any representation for

consideration by ASCODAR. Obviously, it could not be considered by ASCODAR.

11.7 Even the contents of the representation (given in para 11.3 above) do not mention his accomplishment during the year 2012 which would merit upward revision of his grading. In such a scenario, how could the ASCODAR or Accepting Authority modify his grading upwards is not explained by the applicant.

11.8 Therefore, we conclude that the applicant has been unable to make out his case for better marks in his APAR of 2012.

12. Since the Central Assessment Board has assessed the case of promotion of the applicant fairly, we see no reason in interfering in it. Further, since no representation against APAR grading of 2012 giving details of his accomplishments was submitted by the applicant, there is no case of grades being improved.

13. The O.A. deserves to be dismissed both on account of barred by limitation and being devoid of merit.

14. Hence, the Original Application is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member
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(Navin Tandon)
Administrative Member