

OA.No.170/01001/2016/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01001/2016

DATED THIS THE 10th DAY OF JANUARY, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Raju V.K.
 S/o Veeranna
 Aged about 60 years
 Technical Officer 'C'(Retired)
 Lakshya Project Office
 Aeronautical Development Establishment (ADE)
 R/a No.41, "Srishti", 6th Main
 VR Layout, Munekolala
 Marathalli, Bangalore-560 037.Applicant

(By Advocate B.S.Venkatesh Kumar)

Vs.

1. Union of India
 Represented by the Secretary
 Ministry of Defence
 South Block
 DHQ PO, New Delhi-110 011.
2. The Secretary
 Department of Defence R&D and
 Chairman, DRDO
 Room No.513, DRDO Bhavan
 Rajaji Marg, New Delhi-110 105.
3. The Director (DOP)
 Room No.218, DRDO Bhavan
 Rajaji Marg, New Delhi-110 105.
4. The Director
 Centre for Personnel Talent Management (CEPTAM)
 DRDO, Ministry of Defence
 Met Café house Complex
 New Delhi-110 054.
5. The Director
 Aeronautical Development Establishment (ADE)
 DRDO, Ministry of Defence
 New Thippasandra
 Bangalore – 560075. ...Respondents

(By Advocates Sri V.N.Holla and Sri S.Prakash Shetty)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

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

- a. *Call for records of the case from the respondents and on perusal,*
- b. *Quash and set aside the impugned reply bearing No.ADE/7544/OA No.536/14/PA(Disp)/AWS/CAT dtd.21.10.2016 (Annexure-A8) passed by the first respondent and communicated by the fourth respondent.*
- c. *Issue a direction to the respondents to redo the entire assessment at least for the years 2012 and 2013 by taking the percentage of marks for interview as directed by the Hon'ble Supreme Court as against 50 % marks and reassess all the candidates for the said years and promote the applicant in accordance with the said assessment from the date his juniors were promoted and refix the pay and allowances, pension and other retiral benefits and to pay the same*
- d. *Or in the alternative direct the respondents to grant promotion to the grade of TO 'D' from a date when the admitted juniors were promoted if need be by creating a supernumerary post and grant consequential reliefs flowing there from.*

2. The case of the applicant is that on 2.1.1982, he was appointed as Junior Scientific Assistant-I in the respondents' organisation. He is a graduate in Engineering in Electronics and also the post-diploma holder in Computer Science. He was promoted as Senior Scientific Assistant on 15.3.1985. The post of Sr. Scientific Assistant was re-designated as Technical Officer 'A' at the time of implementation of modified recruitment rules of DRTC in 1995. The applicant was further promoted to the post of Technical Officer 'B' on 1.9.1996 and as Technical Officer 'C' from 1.9.2004 and put in more than 11 years of service in the said post as on date of his retirement on 30.11.2015.

3. The applicant submits that Ministry of Defence issued a notification dtd.5.12.2000 notifying the amended rules regulating the method of recruitment to Gr. A, B and C Technical Posts in DRDO. Under Flexible

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Complementing Scheme for promotion from one grade to another grade, an employee has to render 5 years regular service as on 1st September of the year of assessment. As per para 7, on promotion from one grade to the next grade, the post held by an individual in the lower grade shall stand upgraded automatically and shall be personal to the individual. The Govt. of India has also issued SRO 33 published in official gazette on 29.2.2008 wherein an addition to schedule 1 has been made by adding the post of Technical Officer 'D' as Sl.No.7 to the schedule with prescription of six years minimum service. As per the above, the applicant became eligible for the assessment on 1.9.2010, since he had completed the minimum period of six years on 31.8.2010. Accordingly, his case was taken up for assessment not only in 2010 but in the years 2011, 2012 & 2013 as well. In the seniority roll of Technical Officer 'C' for the year 2011(Annexure-A1), the applicant's name is at Sl.No.104 and he appeared for the interview held on 22.6.2011. However, his name was not included in the list of promotees. In the year 2010, he was in fact considered for assessment but he was not successful in that year. In the seniority roll of Technical Officer 'C' for the year 2012(Annexure-A2), his name is at Sl.No.60 and he participated in the assessment board. The marks and the list of promotees in the DRTC assessment board of 2012 is at Annexure-A3. The applicant was not promoted but his juniors viz. Ms.A.C.Shobha and Shri V.Dakshinamurthy were promoted and only then he became aware that there has been supersession. He was again included in the assessment board 2013. The respondents published the list of promotees of assessment result 2013 wherein also his name was not included but his juniors viz. Ms.PVSD Devi, Shri S.Sandeep and

S.Vijaykumar were included in the list of promotees.

4. The applicant further submits that he had been working as Project Manager in Lakshya Project. Copy of organisation chart is produced at Annexure-A4. He was responsible for taking care of Lakshya-UAV Limited Series Production and supporting flight trials by providing flight expendable/consumables which are required for the Armed Forces(Indian Air Force, Indian Navy and Indian Army). He is also responsible for Lakshya Airborne Line Replaceable Unit's (LRU's), Ground Supporting Equipment (GSES), Ground Handling Equipment (GHEs), flight expendable/consumables and spares (Electrical/Electronics) which are required by the Armed Forces. He was also involved in providing air-borne LRU's for more than ten Lakshya UAVs and other flight expendables on required basis of the Armed Forces. He was sincere, meritorious in the whole of his career and always assessed very highly in his confidential reports all along. In this background, he was shocked and surprised for his continued non-selection in the assessment boards for four years viz. assessment years 2010, 2011, 2012 and 2013. Hence, he submitted a representation to the 2nd respondent on 9.10.2013 requesting to review the assessment results from 2010 onwards and for according promotion from the date of promotion of his juniors. In reply to the same, the applicant was informed vide letter dtd.8.11.2013 that as per Rule 6(1) of DRTC Rules 2000, promotions shall be made under merit based limited flexible complementing scheme and that promotion in DRTC are based on candidates' performance in assessment board and average APAR marks which may result in juniors superseding seniors. After receipt of the aforesaid reply, the applicant submitted another

OA.No.170/01001/2016/CAT/Bangalore Bench representation on 18.11.2013 requesting the 2nd respondent to furnish his performance in assessment board during 2010-2013 year wise and also the APAR marks obtained by him for the years 2004-2012 year wise. But no reply was furnished to him. Aggrieved by the same and continued non-selection for promotion to the post of Technical Officer 'D', the applicant filed OA.No.536/2014 which was disposed of on 20.11.2015(Annexure-A5) by this Tribunal directing the respondents to make available the APARs sought for by the applicant and to dispose of the comprehensive representation to be submitted by the applicant by a reasoned and speaking order in the light of the DOPT guidelines and settled legal position. In the said order, the applicant was also given liberty to approach the Tribunal in the event of the speaking order not being to his satisfaction. The Tribunal also imposed a cost of Rs.10,000 on the respondents to be paid to the State Legal Services Authority. But the respondents did not obey the orders of the Tribunal in that the copies of APAR of the applicant were not furnished within the time prescribed but took their own time and furnished on 9.2.2016 i.e. after nearly 3 ½ months. After receipt of the APARs, the applicant submitted detailed representation on 9.3.2016(Annexure-A6) enclosing all relevant enclosures. He submitted reminder dtd.29.6.2016(Annexure-A7) after expiry of more than 3 months when no reply was received. After expiry of more than 7 months, the respondents have sent a letter dtd.21.10.2016(Annexure-A8) rejecting the request of the applicant for grant of promotion as TO 'D'.

5. The applicant further submits that the impugned order dtd.21.10.2016 is neither speaking nor reasoned one as the respondents did not consider the judgments relied upon by the applicant and his

achievements while in service in Lakshya LSP which is in utter disregard to the observation made by this Tribunal and hence the same is unsustainable and liable to be quashed. As already highlighted in the earlier OA by the applicant, the case in OA.No.291/2003 decided on 11.2.2004(Annexure-A9) by this Tribunal related to assessment and interview for career advancement scheme from Sr. Scientist to Principal Scientist in the ICAR wherein it was held that allotting 50 out of 100 marks to personal interview for which there is no provision in the career advancement scheme as bad in law and allowed the OA. This order was challenged before the Hon'ble High Court in WP.No.19516/2004(S-CAT)(Annexure-A10) which was dismissed and the subsequent appeal before the Hon'ble Supreme Court was also dismissed vide order dtd.30.3.2011(Annexure-A11) by imposing a cost of Rs.50,000/- on the department. Despite which, the respondents have passed the impugned order holding that the order passed was based on the facts of that case. But they could not explain as to how the facts of that case are different from the case in hand. The applicant has also brought to the notice of the respondents the judgment of the Chandigarh Bench of this Tribunal in OA.No.542/CH/2006(Annexure-A12) which pertains to the very same DRDO and it also dealt with the promotions from one grade to another under the merit based flexible complementing system and after noting the several decisions of the Hon'ble Apex Court, directed the respondents therein to re-conduct the selection for the post of Technical Officer 'B' by keeping marks for viva-voce test not more than 15%. In para 13 of the order in OA.No.536/2014, this Tribunal has given a finding that 'the action of the respondents not only amounts to wilful disobedience of the Hon'ble

Apex Court judgments but could also be seen as legal mala fide. The respondents in their best interest would suo motu issue guidelines fixing the percentage and communicate to all the assessment board to adopt the said percentage of interview in consonance with the judgment of the Hon'ble Apex Court for a selection process at least from now'. Even this finding seems not to have received the adequate attention by the respondents, nothing is forthcoming in the impugned order regarding this observation. The applicant received commendation letter by the Tata Power Company Ltd. dtd.14.9.2006(Annexure-A13) and CACE award dtd.1.1.2014(Annexure-A14) issued by the 4th respondent highly commending his contribution for special efforts in Management of Electronics Stores. He has scored outstanding marks in APARs in all the years and even for the years 2013 and 2014, he has been awarded 88.5% and 89% in the APARs. His name should have figured within 20% of the total strength of TO 'C' in DRTC in view of his outstanding contribution. The respondents have not answered in the impugned order as to why they have not considered these merits of the applicant. The applicant has superannuated on 30.11.2015 after putting more than 36 years of service. His repeated requests for according promotion have fallen to the deaf ears of the respondents. Aggrieved by the same, the applicant has filed the present OA seeking the relief as stated above.

6. The respondents have filed their reply statement wherein they submit that the applicant joined the respondent organisation as Junior Scientific Assistant-I on 02.01.1982 and retired as Technical Officer 'C' on 30.11.2015 in the DRDO Technical Cadre which is governed by DRTC Rules 2000(Annexure-R1). The technical cadre of the dept. is

exempted from the purview of DOPT in terms of Govt. of India (Allocation of Business) Rules, 1961(Annexure-R2) in regard to recruitment, promotion and seniority. As per Rule 6 of DRTC, promotions in the cadre are made under the merit based Limited Flexible Complementing System. As per Rule 6(3), a fixed percentage of total eligible employees in the grade are promoted based on annual assessment by a prescribed Assessment Board. The employees are promoted on the basis of their overall merit as decided by the Assessment Board. As per Rule 7, on promotion the post held by the individual stands upgraded and is personal to the individual. In other words, the promotion is not linked to actual availability of vacancies and it is also not linked to the seniority of the employee as it is based on the overall merit decided by the Assessment Board giving equal weightage to APARs as well the assessment made by the Assessment Board. The list is arranged in the order of seniority in the grade only in the event of individuals securing equal marks. The Assessment Board for the purpose is constituted by the Centre for Personal Talent Management(CEPTAM). In the assessment process, the candidate is given opportunity to give presentation of his/her work and achievements. The final merit list is prepared keeping into account the APAR marks of the candidate and also the marks given by the Assessment Board. The candidates are promoted based on overall relative merit and subject to prescribed percentage. The assessment system is thus very fair as the employee is also given an opportunity to give a presentation of his/her work and achievement before the Assessment Board and at the same time equal weightage is also given to the marks given to the employee by his immediate superiors in

his/her APARs. The applicant in his service career was promoted to various levels under the same promotion scheme and assessment process. The applicant was assessed for promotion to the level of TO 'D' in all the years in which he was eligible for consideration without any limit on number of chances. Therefore, the applicant has no cause of grievance and his claim for linking his promotion to seniority is incorrect as under the applicable promotion scheme, the promotion is merit based and not linked to seniority or any benchmark, except in the event of individuals securing equal marks. Therefore, his adducing the seniority positions vis-à-vis other candidates is not relevant and merely an attempt to mislead. The similar promotion schemes where equal weightage has been given to interview and APAR(50% each) has been upheld by the Hon'ble Supreme Court in case of promotion to higher grades in KA Nagamani Vs. Indian Airlines & Ors.- 2009 (5) SCC 515 and AIR 2009 SC 3240. In a similar matter of this deptt., the Ld. ASG advised that in case of any such challenge, the Deptt. should rely upon the judgment of the Hon'ble Supreme Court reported in 2009 (5) SCC 515 and AIR 2009 SC 3240, wherein the proportion based on 50% APAR and 50% interview has been upheld. Hence, the law laid down by the Hon'ble Supreme Court will override observation made by the High Court.

7. They submit that the applicant has been participating in the assessment process from the very first year of his becoming eligible for promotion from Technical Officer 'C' to Technical Officer 'D', both Group 'A' posts and the latter being the highest post of the cadre. Under the merit based Flexible Complementing Scheme provided in the DRTC Rules, the promotion of the candidate is linked entirely to merit and not

with the seniority or any benchmark. The achievements being projected by the applicant must have been placed before the Assessment Board by way of his resume in the APARs as well as his presentation before the Assessment Board. The promotions under the merit based Flexible Complementing Scheme provided in the DRTC Rules are linked to equal weightage of APAR marks and the assessment made by the Assessment Board. The promotions are not linked to seniority of a candidate, except in the event of individuals securing equal marks. The contention of the applicant that the order passed by the respondents is neither speaking nor reasoned is denied as the applicant is furnished with a reasoned order explaining on the following counts as to why his request for promotion could not be accepted on all the accounts on which he had sought the same:

(a) Promotions, as per the DRTC Rules, are made through merit based limited Flexible Complementing Scheme which involve equal weightage to APAR marks as well as assessment made by the Assessment Board.

(b) His claim for promotion based on DOPT guidelines issued vide OM dtd.08.02.2002 cannot be accepted since the cadre has its own promotion scheme specified in the statutory rules and also it is exempted from the purview of DOPT in terms of Govt. of India (Allocation of Business), Rules, 1961.

(c) Since in terms of the DRTC Rules, there is an upper cap on the total strength of TO 'D', promotions have to be limited to the available numbers. A candidate may not get promotion even after performing well due to relative merit vis-à-vis other candidates.

(d) The case laws relied upon by the applicant in his representation were not applicable in his case as the promotion of the applicant was to be decided

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under the merit based limited FCS provided in the statutory rules. It may also be mentioned that the judgments where the courts have held 50% marks for interview as excessive are in the case of appointment done through written examinations followed by interview. In the instant case since there was no written examination, the judgments will not apply. As regards the judgment of the Hon'ble Supreme Court in Civil Appeal No.2714/2015 – DGICAR Vs. D.Sundara Raju, it is respectfully submitted that the said judgment also does not apply here due to the distinguishing facts of the said case is pertained to a different promotional scheme namely 'Career Advancement Scheme' formulated by ICAR which is distinct from the merit based limited FCS provided in the DRTC rules followed by a viva voce test.

(e) The Hon'ble Supreme Court in KA Nagamani vs. Indian Airlines & Ors – 2009 (5) SCC 515 and AIR 2009 SC 3240, have upheld promotions being decided based on 50% marks for APAR and 50% for interviews.

8. Since the case laws were not applicable to the FCS provided in the statutory rules of the respondent dept., the representation of the applicant was disposed of accordingly. Regarding order dtd.27.11.2008 of Hon'ble CAT, Chandigarh in OA.No.542/2006, it is submitted that the said order was challenged by the department before the Hon'ble High Court of Punjab & Haryana vide CWP No.8818/2009. After dismissal of CWP, the dept. filed an SLP (CC) No.4024/2010 before the Hon'ble Supreme Court. In his advice dtd.22.3.2010, the Ld.ASG informed that in view of the fact that after implementation of the 6th CPC recommendations, the posts of Technical Asstt. 'A' and Technical Asst. 'B' were merged w.e.f. 01.01.2006 and as such in the circumstances, the Hon'ble Supreme Court declined to interfere and specifically left the question of law open. With regard to the apprehension of the dept. that

other officials may also seek to take help of the High Court, the Ld.ASG advised that in case of any such challenge the dept. should rely upon the judgment of the Hon'ble Supreme Court reported in 2009 (5) SCC 515 and AIR 2009 SC 3240 wherein the proportion based on 50% APAR and 50% interview has been upheld.

9. They further submit that the observation of the Hon'ble Tribunal in OA.No.536/2014 was prima facie observation and not a decision to quash the assessment guidelines of the dept. as the same were not under challenge. The guidelines followed for assessment for promotion from one grade to another grade in DRTC were issued vide letter dtd.01.05.2003. And the procedure being followed for assessment has also been mentioned in the web-site of the centre wherein it has been clearly notified that the promotion list is prepared based on average APAR marks and marks awarded in the interview, giving equal weightage i.e. 50% to each. As already explained the promotions are based on 50% weightage to APAR and 50% weightage to interview has been upheld by the Hon'ble Supreme Court in KA Nagamani Vs. Indian Airlines & Ors. – 2009 (5) SCC 515 and AIR 2009 SC 3240. Therefore, the correct position is that promotions in the respondent dept. are made through an Assessment Board which is presented in the statutory rules and method being followed is prescribed in notified guidelines. When the scheme was challenged and the SLP was before the Hon'ble Supreme Court, the Hon'ble Court did not interfere since the matter had become infructuous due to merger of posts after 6th CPC. However, the Hon'ble Supreme Court specifically left the question of law open. Therefore, the decision of the dept. to persist with the scheme is not in violation of the judgment of the Hon'ble Supreme

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Court. Since in terms of the DRTC Rules, there is an upper cap on the total strength of TO 'D', promotions have to be limited to the available numbers. A candidate may not get promotion even after performing well due to relative merit vis-à-vis other eligible candidates. Therefore, the promotions are not linked to seniority, except in the event of candidates securing equal marks, therefore, the request of the applicant for promotion after his superannuation on the basis of promotions of his juniors could not be accepted.

10. The applicant has filed rejoinder reiterating the submission already made in OA and submits that while it is true that the DRDO may be exempted from the purview of DOPT in terms of Govt. of India (Allocation of Business) Rules 1961, that by itself will not give the respondents powers to frame rules at their whims and fancies giving go by to all norms and therefore, the respondents are bound to broadly follow the DOPT orders and instructions like fixing the maximum marks for interview etc. and at any rate they could not have fixed 50:50 for APAR and interview and the interview marks cannot be more than 15-25. If that is allowed to be done, meritorious candidates would not get their due and other considerations will prevail. Even if the rules permit fixing 50:50 marks for APAR and assessment as this Tribunal has already held that such a ratio is illegal and unjust in view of several judgments. He submits that his case is not that he wants the promotion should be linked to seniority. His case is that there should be a cut off percentage and whoever crosses that percentage, their names should be arranged in accordance to the seniority and promote among them and the procedure now followed is not in accordance with the guidelines. The contention of the respondents in para 10 of reply is not

correct as the Hon'ble Supreme Court never upheld the grant of 50% for APAR and 50% interview but since the parties thereto got the promotion because of merger in view of VI pay commission recommendation w.e.f. 1.1.2006 of the posts of Technical Assistant A and Technical Assistant B the Supreme Court did not interfere but left the question of law open. The respondents have merely rejected the representation of the applicant purporting to following DRTC rules giving equal weightage to APAR and Assessment marks without realizing that not more than 15-25 marks could be awarded in the assessment/interview and from a perusal of the marks obtained, it could be seen that if interview marks are properly awarded the applicant would have been found to be more meritorious. The respondents are trying to support their case only relying on the DRTC rules forgetting that the DOPT guidelines 8.2.2002 ought to be followed and they cannot say that they are exempt from the purview of DOPT. The respondents contended that the case of Sundar Raju is not applicable to the facts of the present case wherein the Hon'ble Supreme Court has come down heavily for prescribing 50% marks for interview. In the same breath, it can also be said that the facts of Nagamani's case reported in AIR 2009 Supreme Court 3240 cannot also have application to the facts of the present case. The respondents have not properly understood the case of the applicant because he is questioning the procedure followed by the respondents in giving equal weightage to APAR and assessment/interview.

11. The respondents have filed additional reply to the rejoinder filed by the applicant reiterating the submission already made in reply and submit that the department in regard to its technical cadre has been exempted

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from the purview of DOPT in terms of Govt. of India(Allocation of Business) Rules, 1961. The objective of the exemption is to give autonomy to the dept. to formulate the HR policy of the scientific and technical personnel of the dept. to achieve its strategic goals, which are related to defence of the country. The scientific and technical personnel of the dept. are governed by a merit based promotion scheme, wherein the employees are considered for promotion in a time bound manner and a given percentage of eligible employees are granted promotions, unlinked to seniority. The employees are also granted various incentives like variable increments on promotions at each level to further incentivise merit. In converse, the incentives are taken away, in the case of employees who are found to lack during assessment at the time of promotion to the next grade. Thus, the HR policy puts great emphasis on merit, wherein the meritorious employees are awarded and the non-meritorious employees have to give away their benefits. Such merit based policy is eminently suitable for the R&D organisation dedicated to defence of the country. The dept. in this regard, cannot afford to have normal DOPT norms of promotion which are applicable in services/posts where the career progression is linked to seniority and availability of vacancies in the hierarchy. The policy followed for assessment of employees for promotion in DRTC, wherein 50% weightage is given to APARs and remaining 50% to the assessment made by an interview board comprising of subject experts/external members, is with the sole objective of giving primacy to merit than any other factor. The applicant having got all his promotions under the same scheme cannot now turn back and question the same scheme when he does not get promotion at one level. Moreover, the method of

promotion where equal amount of weightage is given to APARs as well as assessment made by an interview board has been upheld by the Hon'ble Supreme Court in the case of KA Nagamani. The assessment marks are given to a candidate by the assessment board comprising of experts and external members based on the record of work submitted by the candidate and presentation made himself by the candidate before them. Hence, the averment of the applicant that he has not been given proper marks has no basis or ground and as such is denied.

12. The applicant filed additional rejoinder wherein he submits that even if the Govt. of India (allocation of Business) Rules, 1981 exempted the DRDO within the purview of DOPT, the same cannot by itself give the respondents power to override the entire scheme of things and fix 50:50 for APARs and interview marks. Merely because the promotion policy was not quashed by this Tribunal, it cannot be said that this Tribunal has certified the correctness of the policy. In view of the several judgments cited by the applicant in earlier OA, the prescription of 50:50 has been held to be unjust and arbitrary.

13. We have heard the Learned Counsel for the parties. The Learned Counsels for the applicant and the respondents have made submissions reiterating the factual position and their points as highlighted by them in the OA and the reply statements. The applicant has filed written arguments note highlighting his points. The respondents have also filed their written arguments note enclosing therewith the citations.

14. We have gone through the main contentions of the applicant and replies of the respondents in detail. The facts in this case have already

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 been traversed in detail by this Tribunal in OA.No.536/2014 where the
 following reliefs were sought for:

- “a) Call for records of the case from the respondents and on perusal*
- b) Quash and set aside the impugned letter No.ADE/10078/2/HRD/VKR/2013 dated 8.11.2013 (Annexure-A9)*
- c) Issue a direction to the respondents No.2 and 3 to review the promotions from 2010 onwards and to promote the applicant from the date his juniors are promoted to Technical Officer ‘D’*
- d) Issue a direction to the respondents to dispose of the representation of the applicant at Annexure-A10 by furnishing the performance in assessment board during 2010, 2011, 2012 and 2013 and APAR marks from 2004 to 2012*
- e) and grant such other relief/s as this Hon’ble Tribunal deems fit to grant to the applicant in the circumstances of the including an order as to costs of this application.”*

In this OA, orders were issued directing the respondents to provide all the APARs to the applicant and the applicant was permitted to make a detailed representation based on the APARs furnished since the reasons for his non selection were not apparent to the applicant in that application as there were no adverse remarks communicated against him etc. Even though the Tribunal had not given its final order on the main issues raised, it had discussed in detail the main points relating to the stipulation of having 50% of the marks for interview and the balance 50% being given for the marks obtained as per the APARs by the Assessment Board constituted under SROs of the respondents’ organization. After perusing the APARs, as directed by the Tribunal, the applicant gave a detailed representation on 9.3.2016 and he has contended that he had outstanding marks based on the APARs for all the years concerned and only in one year in 2012, the interview marks were reduced substantially compared to the other years. The main contention of the applicant was that assigning of 50% marks for APAR and 50% of the marks for assessment/interview is in complete violation of the settled legal position as has been observed by this Tribunal in its order in OA.No.536/2014. He has

also cited the Hon'ble Apex Court judgment in *Ashok Kumar Yadav vs. State of Haryana* reported in *AIR 1987 SC 454* where the Hon'ble Supreme Court held that the marks allocated for viva voce shall not exceed 12.2% of the total marks (this was for the selection by the State Public Service Commission) and the judgment in *Dharam Vir vs. Union of India* passed by the Hon'ble Chandigarh Bench of CAT which was upheld by the Hon'ble High Court of Punjab and Haryana. In the latter case, on further appeal to the Hon'ble Apex Court, the same was disposed of as infructuous as the concerned relief had already been given due to the merger of certain grades and the Supreme Court left the question of law open. His representation has been rejected by the impugned order dtd.21.10.2016 wherein the respondents have contended that the judgments quoted by the applicant are not applicable as these are delivered based on the facts and circumstances of the cases before the Court and are related to cases which are of fresh applicants and not for departmental promotions. The applicant has also cited the order dtd.30.03.2011 in *Civil Appeal No.2714/2005* in the case of *DG ICAR vs. D.Sundara Raju* wherein the Hon'ble Supreme Court had held that the applicants were unjustified in allocating 50% marks for the interview particularly when the appellants did not even disclose to the respondent that the interview would also be held to evaluate suitability of the candidate for the said post. In the case decided by the CAT, Chandigarh Bench in *OA.No.542/CH/2006* dtd.27.11.2008(supra), the Tribunal had based its conclusions on the various Supreme Court judgments and directed the respondents to reconduct the selection for the post of Technical 'B' by keeping marks for viva voce test not more than 15% as reflected in *Ashok Kumar Yadav's* case (supra) and then make appointment accordingly. The respondents have contended that the policy guidelines circulated in 2001 and

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further amended and circulated in 2003 vide letter No.DRDO/PEACE/00108/Guidelines – Assessment/2003 dtd.01.05.2003 clearly notified that the promotion list will be based on average APAR marks and marks awarded in the interview, giving equal weightage i.e. 50% to each. They have also contended that the applicant had all along got his earlier promotions based on the findings of similar assessment boards and having not questioned any of them before, he cannot turn around now and claim that the procedure is not sustainable in law only when he could not get selected. They have also cited judgments to support their claim. On the 50% weightage for interview, they have cited the case of *KA Nagamani vs. Indian Airlines & Ors – 2009 (5) SCC 515 and AIR 2009 SC 3240*. They have also cited the order of the CAT, Hyderabad Bench in OA.No.847/1997 dtd.11.8.1999 where similar issues were dealt with and the Tribunal did not find fault with the allotment of 50% of marks for viva voce. From the above, it is apparent that the procedure for allotting 50% of marks based on the findings of the Assessment Board constituted under SRO provisions of the respondents have been in vogue for almost two decades now and it is also apparent that the applicant had in fact been a beneficiary of the same assessment boards while he was promoted on the earlier occasions also. However, having performed to the best of his abilities and contributed significantly to the organization, it is legitimate on the part of the applicant to be given a fair chance in selection to the next higher grade also.

15. His APARs have been above the benchmark in all the years when he was considered for promotion and except for one year, his interview marks have also been above average. Therefore, it is obvious that the applicant had all the merit to be considered for the next level promotion and there is no dispute regarding the same. His contention that his

juniors have been promoted however, will not be of any assistance to him since the procedure contemplates a review of the APARs as well as the interview where the applicant had the opportunity to present to the Board his achievements and contributions and the respondents have rightly contended that when the assessment is based on merit as above, it is possible that the juniors may get promotions when the applicant could not. Seniority does not have any play in this regard once all the applicants are expected to pass through the same eligibility norms. The respondents have relied heavily on the Supreme Court judgments in *KA Nagamani's* case where the Supreme Court could not find fault with 50% marks allocated for viva voce and Supreme Court specifically referred to its judgment in *Indian Airlines Corporation vs. Capt.K.C.Shukla & Ors.*[(1993) 1 SCC 17] where the Court held as under:

“Law on the proportion between written test and interview or evaluation on confidential entries and personality test have been laid down in a series of decision by this Court commencing from *Ajay Hasia v. Khalid Mujib Sehravardi*; *Lila Dhar v. State of Rajasthan*; *Ashok Kumar Yadav v. State of Haryana and State of U.P. v. Rafiquddin*. Distinction appears to have been drawn in interview held for competitive examinations or admission in educational institutions and selection for higher posts. Effort has been made to eliminate scope of arbitrariness in the former by narrowing down the proportion as various factors are likely to creep in. But same standard cannot be applied for higher selections. *Lila Dhar* case brings it out fully. In respondent's case, the personality of the respondent was being judged by a Committee constituted under the rules for purposes of higher promotional posts and, therefore, it was governed by the ratio laid down in *Lila Dhar* case and it would be unsafe to strike down the rules as arbitrary when the evaluation was job oriented. Marks to be allotted by the Committee were on professional ability and management capacity.”

16. To crystallize, in *Nagamani's* case, the main contention was not related to allocation of 50% marks for viva voce but whether the recruitment and promotion rules are statutory in nature or mere administrative instructions. The Court dealt with the 50% of marks for interview as it was one of the contentions raised and could not find fault with the same since for higher level posts when the marks were to be allotted

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 by a committee based on the professional ability and management capacity and the evaluation was job oriented, it will not be considered as arbitrary to have such a high percentage for the viva voce. This case was decided in a particular context of promotion to a higher post where the relative merit of the contenders was being assessed by a committee based on their experience and capacity. Even though the respondents have claimed that the case of *Director General ICAR vs. D.Sundara Raju* is not relevant since it related to a different organisation where the candidates were not even aware that they would be subjected to the process of interview, from a detailed reading of the judgment which is of the year 2011 vis-à-vis that of Nagamani's which was delivered on 27.3.2009, the Hon'ble Apex Court had gone into the question of allotment of viva vice marks in great detail and the sum and substance of this judgment is that while in the case of the selections where written examinations were combined with the interview, the marks for the interview should be as minimal as possible as was made out in Ashok Kumar Yadav's case, in the case of other selections based on the performance, experience etc., 50% marks being allotted for interview can only be termed as arbitrary and excessive. In fact, they had commended the appellants in the ICAR for having brought down the percentage of marks for the interview i.e. from 50% to 10% saying that good sense has ultimately dawned on the appellants.

17. We cannot accept the arguments of the respondents that the present application is different and the ICAR case was a career advancement scheme whereas the DRTC assessments are different. It is obvious that the SROs notified for DRDO are also in the nature of career

advancement schemes since they prescribe certain minimum years of regular service and provided for improvement in the salary grades of the employees concerned. In fact, the rules specify that on promotion from one grade to next grade, the post held by an individual in the lower grade shall stand upgraded automatically and it shall be personal to the individual. It has also been specified in Rule 11 of the same SRO 296 of 2000 rules that it shall be obligatory on the part of the individual promoted from one grade to another to continue to perform the same duties as he/she was required to perform prior to such promotion if so directed by the appointing authority. Therefore, it is clear that SRO 296 of 2000 and the assessment procedure flowing therefrom are a part of the overall scheme to keep the employees motivated without any stagnation providing higher salaries and emoluments in the overall interest of the organisation to get the best out of the employees. The spirit of the Hon'ble Apex Court judgment in *DG ICAR vs. Sundara Raju* will certainly apply to the case of the applicant and as such we have to come to the conclusion that keeping 50% of the marks for the interview under any rule cannot be sustained due to the series of judgments in this regard up to the Hon'ble Apex Court. The order of Chandigarh Bench of CAT referred to above in *Dharam Vir vs. UOI & Ors.* adds strength to the arguments relating to the excessiveness of keeping 50% marks for viva voce. In its order in OA.No.536/2014, this Tribunal suggested as follows:

"13. The action of the respondents not only amounts to wilful disobedience of the Hon'ble Apex Court Judgements, but could also be seen as legal mala fide. The respondents in their best interest would suo motu issue guidelines fixing the percentage and communicate to all the Assessment Boards to adopt the said percentage for interview in consonance with the judgment of the Hon'ble Apex Court for a selection process at least from now."

18. This aspect has not been considered by the respondents even in the

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last two years and we therefore direct them to consider amending the SROs relating to their assessments for all categories of staff covered under such SROs as expeditiously as possible. The OA is therefore allowed with the modification that the relief to be given will be with respect to the merit of the applicant and the year/date etc., will be with respect only to his entitlement and not based on the date/year his juniors were promoted. This they shall do so within a period of two(2) months from the date of this order. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/01001/2016

Annexure-A1: Copy of seniority roll of TO C for the year 2011
Annexure-A2: Copy of seniority roll of TO C for the year 2012
Annexure-A3: Copy of list of promotes in DRTC assessment 2012
Annexure-A4: Copy of organization chart of Lakshya Project
Annexure-A5: Copy of order dtd.20.11.2015 in OA No.5376/2014
Annexure-A6: Copy of representation dtd.9.3.2016
Annexure-A7: Copy of reminder dtd.29.6.2016
Annexure-A8: Copy of impugned communication dtd.21.10.2016
Annexure-A9: Copy of order dtd.11.2.2004 in OA 291/2003
Annexure-A10: Copy of order dtd.3.6.2004 passed by Hon'ble High Court of Karnataka in WP 19516/2004(S CAT)
Annexure-A11: Copy of judgment in Civil Appeal No.2714/2005 passed by Hon'ble Supreme Court of India
Annexure-A12: Copy of judgment of Chandigarh Bench of CAT in OA No.542/CH/2000 dtd.27.11.2008
Annexure-A13: Copy of commendation letter dtd.14.9.2006 issued by Tata Power Company
Annexure-A14: Copy of CACE Award dtd.1.1.2014

Annexures with reply statement:

Annexure-R1: Copy of notification dtd.5.12.2000 issued by Min. of Defence
Annexure-R2: Copy of relevant extract of the Govt. of India (Allocation of Business) Rules
Annexure-R3: Copy of advice of the Ld.ASG dtd.22.3.2010
Annexure-R4: Copy of sanction letter dtd.8.4.2016

Annexures with rejoinder:

-NIL-

Annexures with reply to the rejoinder:

Annexure-R5: Copy of Hon'ble SC order in Civil Appeal No.5314/2007(2009 (5) SCC 515 & 2009 SC 3240)
Annexure-R6: Copy of letter dtd.22.1.2001 w.r.t. recruitment/assessment in DRTC

Annexures with additional rejoinder:

-NIL-

Annexures with written arguments note filed by the applicant:

-NIL-

Annexures with written arguments note filed by the respondents:

Annexure: Copies of citations

