

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/01045/2014

Friday, this the 25th day of January, 2019

CORAM:

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER

Sulaiman M.M.,
Scientist/Engineer SD,
CUSP Division,
Liquid Propulsion Systems Centre (LPSC),
Viliamala,
Thiruvananthapuram,
PIN -695 547.

....Applicant

(By Advocate Mrs.Geethamani)

V e r s u s

1. The Union of India
represented by
The Secretary to Government,
(Chairman ISRO),
Department of Space,
Government of India,
Anthareeksha Bhavan,
New B.E.L. Road,
Bangalore – 560 094.
2. The Director,
Liquid Propulsion Systems Centre,
Indian Space Research Organisation,
Valiamala P.O.,
Thiruvananthapuram – 695 547.

....Respondents

(By Mr.N.Anil Kumar, SCGSC for Respondents)

This application having been heard on 22nd January, 2019 the Tribunal
on 25th January, 2019 delivered the following :

.2.

ORDER

HON'BLE MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

OA No.1045/2014 is filed by Shri Sulaiman M.M., who was working as Sci/Eng SD while filing this OA. He went on to retire from service in November, 2014. The reliefs sought in the OA are as follows:

- i. To call for the records leading to Annexure A-11 and to set aside the same;
- ii. To issue a direction to the respondents to promote the applicant to the cadre of Sci/Engineer SE with effect from 1st January, 2014 and to give him the consequential service benefits;
- iii. Declare that the applicant is entitled to be screened for promotion in the review held on 1st July, 2014.
- iv. To issue a direction to the respondents to promote the applicant with effect from 1st July 2014 to the cadre of Sci/Engineer SE and to give him all consequential benefits including arrears of salary;
- v. Direct the first respondent to consider Annexure A-12 representation and pass appropriate orders in the matter;

And

- vi. Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. The applicant had initially been appointed to the ISRO in 1978 in the category of Tradesman B. He came to be promoted from time to time and finally was promoted as Sci/Eng SD in 2009. The next promotion due to him was Sci/Eng SE. Considering that there was a four year residency period for elevation from D to E, he was eligible for the promotion on 01.01.2013, but was not granted the same. The department conducts periodical review on 1st January and 1st July of every year for effecting promotion to the higher post.

.3.

This periodical review is made on the assessment of Annual Performance Assessment Report of the candidates concerned. The APAR of the candidate for the year 2009 is 'Tending to Outstanding' (AA-). He got the same ranking during 2010, 2011 and 2012 as is seen from the copies of APARs produced as Annexure A1 to A4 series. He was assessed as 'Outstanding' (A) for the period from 01.01.2013 to 31.08.2013 (Annexure A5). Thus the summary of his APAR ranking from 2009 to 2013 are as below:

Year	2009	2010	2011	2012	2013
Grade	AA-	AA-	AA-	AA-	A

3. He contends in the OA that in the employer institution two reviews are held for screening and promotion as on 1st January and 1st July of every year. The various orders issued by the Department of Space under which the respondent organisation functions, relating to periodical reviews and promotions are at Annexure A7, A8 and A9. The screening norms for promotion to the post of Scientist/Engineer SE is given as follows:

Sl.No.	Grade	Screening Norms							
		4 yrs	4 ½	5	5 ½	6	6 ½	7	8
1	SD to DE	2A 2AA-	1A 3AA-	4AA- 1A-	2AA- 3A-	6A-	5A- 1B+ @	4A- 3B+ @	@

.4.

From the annexures relating to his APARs the applicant has secured 4AA- and 1A-. However, the applicant was screened out in the year 2014. He was intimated of the same by Annexure A10 communication. The case of the applicant was considered by the DPC in the review held on 01.01.2014; again the committee decided to screen out the applicant (Annexure A11). The applicant submits that he was entitled to be considered in the review as on 01.07.2014, but his case was not considered. A copy of the representation that the applicant submitted before the Chairman, ISRO is at Annexure A12. He was not favoured with any reply to the same.

4. As grounds, the applicant contends that he has been deprived of his rightful due. Article 16(1) of the Constitution of India provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be considered for promotion. Equal opportunity is only a corollary to this consideration. The applicant is in no position to understand how his case was declined by the Screening Committee despite his possessing the required APAR gradings of 4AA- and 1A after five years of residency.

5. It is further maintained that the Screening Committee has given short shrift to the procedure laid down in Annexure A8. The recommendation of the Screening Committee is to be necessarily based on the APAR gradings of an officer and then it is put up to the Selection Committee to consider his case for

.5.

promotion. In his case the applicant was never presented before the Selection Committee. Thus he is aggrieved not only by the merit of the decision of the respondents but by the process of decision making itself. He submits that any administrative action is subject to judicial review on three grounds namely (1) illegality, (2) irrationality and (3) procedural impropriety. The action of the respondents ticks all these columns, he alleges.

6. The respondents have filed a detailed reply statement following which they have filed an additional reply statement and also a memo. It is maintained in the reply statement that there has been no illegality or fault in procedure and in the action of the Screening Committee, in having screened out the applicant. It is stated that the Flexible Complementing Scheme is a merit oriented system of promotion available in scientific organisations and the same is different from the general scheme of promotion available to employees elsewhere in Government. While the unique system is time bound, it is also a merit based and non-vacancy oriented scheme of promotion. It goes under the name of Merit Promotion Scheme (MPS). Under the scheme those who complete the required number of years of residency in a particular grade are reviewed for promotion to the next higher grade with reference to a rationalised date of review periodically. From 01.07.2009 the rationalised dates for review in respect of all Scientist/Engineer categories have been revised to 1st January and 1st July of every year.

.6.

7. The brief bio-data of the applicant indicating the details of his service is produced and marked as Annexure R1. It may be noticed that the applicant did not possess an exemplary record of service and at every stage promotions have come to him well after the completion of the required waiting period. The applicant who could not manage even a single promotion in time in his career ought to have understood that eligibility *per se* for consideration for promotion to the next higher grade, does not confer any right on him for getting the promotion with effect from that date. This will be subject to the assessment of the merit by the duly constituted Screening Committee/Selection Committee. The applicant was promoted as Sci/Engineer 'SD' in the review on 01.01.2009 and the next grade to which he was eligible for consideration for promotion was Sci/Engineer 'SE' on completion of residency period of 4 years. In the OM dated 22.02.1988, copy at Annexure R2 the procedure for review under MPS is explained.

8. Screening is only to ensure candidates presented to the Selection Committee for assessment are those, who *prima facie*, appear to possess the necessary minimum merit. The Screening Committee is required to consider each case carefully and objectively and make suitable recommendations after examining the work report of each individual, APAR assessment, recommendation of Divisional/Unit Head and papers/technical reports generated by the person concerned. The Screening Committee categorises the persons as 'screened in', that is, those who can be considered by the Selection

.7.

Committee and 'screened out', that is, those who are not recommended by them for being considered. As per ISRO HQ communication dated 19.09.1988 (Annexure R3) in exceptional cases, the committee may 'screen in' a candidate who had been 'screened out' within six months instead of waiting for one year. It is admitted that the APAR gradings in respect of the applicant during the period under consideration is as follows:

Year	2009	2010	2011	2012	2013
APAR Gradings	AA-	AA-	AA-	AA-	A

9. In the review as on 01.01.2014 though he was having the required gradings his case was screened out as he was not meeting various other parameters prescribed for screening. It is further affirmed as follows: “*While the screening norms in terms of ACR/APAR grading would continue, the Screening committee at Centre level or ISRO level should consider each case objectively and make suitable recommendations after examining the work report of each individual, educational qualification, publications/papers, trainings undergone, skills acquired, knowledge-intensive contributions, up-to-date professional knowledge, consistency in performance, regularity in work, worthiness & overall standards within Centres/Units of ISRO and in the organization, Centre/Unit level recommendation of Division/Group/Area/Project etc., in the screening procedure. The potential of*

.8.

the candidate to lead and take up higher responsibilities and provide the required technical/managerial guidance is an essential trait to be considered while screening. The Screening Committee has to present the candidate for DPC at the appropriate time based on all these factors". Thus ACR/APAR alone is not the criterion for screening in a candidate for review. What is required is to objectively assess a candidate's performance as per the parameters set for the purpose as per norms, thus not relying on APARs alone.

10. The respondents also called to their assistance the judgment of the Hon'ble Supreme Court in **Union of India Vs. Hemraj Singh Chauhan and others – (2010 (4) SCC 290)** and **Jagdish Prasad v. State of Rajasthan and others (2011 (7) SCC 789)** wherein it was held that:

"a Government servants gets a right, though not indefeasible right, to be considered for promotion to the appropriate post to which he is eligible and entitled, in accordance with law."

In **Registrar General High Court of Judicature at Madras v. R.Perachi and others (2011 (12) SCC 137)**, the Hon'ble Apex Court held:

"Besides, there is no right of promotion available to an employee. He has a right to be considered for promotion which has been held to be a fundamental right [see para 13 of **S.B.Bhattacharjee v. S.D.Majumdar (2007 (10) SCC 513)**]. However, though a right to be considered for promotion is a condition of service, mere chance of promotion is not [see para 15 of the Constitution Bench Judgment in **Mohd. Shujat Ali v. Union of India (AIR 1974 SC 1631)**]

11. We have heard Smt.Geethamani on behalf of the applicant and Shri N.Anil Kumar, learned SCGSC on behalf of the respondents. All pleadings and

documents were examined. As was found necessary, we called for the original minutes of Screening Committee held for promotion to the post of Scientist/Engineer SE in the reviews held as on 01.01.2013 and 01.01.2014.

12. The applicant has retired from the category of Scientist Engineer SD in November, 2014. He had completed the necessary residency period as on 01.01.2014 for being considered for promotion to Scientist Engineer SE. The system of selection for promotion consists of two parts; firstly a committee entrusted with the responsibility for screening the candidates, who have completed the necessary residency period, examines each case. Eligible candidates are recommended for consideration by the Selection Committee/DPC and the remaining candidates who did not fit the bill are 'screened out'. The applicant in this case belong to the latter group. The necessary period of residency for being considered for promotion from SD to SE is 4 years. He ought to have been eligible from the point of view of completion of residency on 01.01.2013. However, he did not possess the required APAR gradings of 2 A (Outstanding) and 2 AA- (Tending to Outstanding). The applicant possessed 4 AA-. However, he acquired one A (Outstanding) grading for the period from 01.01.2013 to 31.08.2013 although it was for a part year and not for the whole year (he acquired only AA- for the period from 01.09.2013 to 31.12.2013). It is admitted by the respondents that he was ripe for screening as on 01.10.2014 and that he was considered and 'screened out'. At this point we found it necessary to call for the minutes of

the Screening Committee which considered the officers for promotion to Scientist Engineer SE as on 01.01.2014.

13. From the contentions made by the respondents, it is seen that APAR is only one part of the factors for consideration before the Screening Committee and that the committee takes a holistic view of the qualities of the officers concerned including several other criteria. We have no quarrel with the same if it is a part of the general policy, which it appears to be. The learned Counsel for the applicant was vehement in her contention that the impugned order at Annexure A11 is silent about the reason for screening out the applicant. She further wanted this Tribunal to peruse the said minutes of the Screening Committee. Finding this demand reasonable, we directed the minutes of the screening committee that considered the case for promotion of officers to Scientist/Engineer SE as on 01.01.2014 to be presented to us in a sealed cover. On the last date of hearing we opened the seal and perused the record of the meeting. The entry with respect to the applicant appears as Sl.No.26 in the records of the meeting and the following is mentioned:

Sl. No.	Name, SC No. Group/ Unit, DOB (Shri/Smt.)	Area of Specialisation	Date of acquiring SD grade	Qualification	
				While Joining	Subsequently acquired
26	Sulaiman MM SC No.LV26602 CUSP/SUSP (STG)/VMC DOB: 25.11.1954	Mechanical	01. 01.2009	NAC-Machinist-1976 NTC-Machinist 1973	DME – 1985 -I Class

ACR/APAR Gradings										No. of yrs. As on 01.01.2014	Previous review details	Screening Result
2 0 0 4	2 0 0 5	2 0 0 6	2 0 0 7	2 0 0 8	2 0 0 9	2 0 1 0	2 0 1 1	2 0 1 2	2 0 1 3			
					AA- EL-48	AA- EL-21	AA- CMC-21	AA- EL-15	A EL-5	5Y	01.01.2013 Screened Out	Screened Out
					CMC- 18							

14. While conceding that the organisation is a high profile scientific organisation and it is not the grading of the APARs alone which govern professional advancement, we can conclude that the consideration by the Screening Committee suffers from lack of detailed scrutiny. The applicant was screened out and the only details available are his date of acquiring SD grade, qualification, APAR gradings and whether he had been previously screened out. There is no mention of the impressive list of criteria such as “work report of each individual, publications/papers , training undergone, skills acquired, knowledge-intensive contributions, up-to-date professional knowledge, consistency in performance, regularity in work, worthiness and overall standards within Centres/Units of ISRO and in the organisation, Centre/Unit level recommendation of Division/Group Area/Project etc.” referred to in the reply statement as necessary parameters. There is no record whatsoever in the minutes of any other factor having been considered except the APAR grading for which the applicant fulfills the requirement.

15. With due deference to the orders of the Hon'ble Apex Court, with respect

.12.

to the contours of judicial review while considering a promotion matter, we are of the view that the consideration afforded to the applicant appears to be cursory and superficial. The 'screening out' principle puts an abrupt stop to the aspirations of an employee who has completed the necessary waiting period. It is only legal and fully justified that in the event of being not found fit, the reasons for the same must be clearly stated, as otherwise we can only conclude that the rights available to him under the Constitution of India have been denied.

16. Based on the above, we conclude that the OA has merit on its side. We set aside the decision of the Screening Committee in respect to the applicant. We direct the respondents to urgently constitute a Screening Committee to reconsider the case of the applicant for promotion with effect from 01.01.2014. This shall be done within one month from the date of receipt of a copy of this order and subsequently if the case is recommended to DPC/Selection Committee, they shall consider the same within one month of receipt of recommendation of the Screening Committee. OA is disposed of. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

sd

List of Annexures in O.A. No.180/01045/2014

1. **Annexure A1** – True copy of the relevant pages of the Annual Performance Assessment Report of the applicant for the period from 01.01.2009 to 31.12.2009.
2. **Annexure A2** – A true copy of the relevant pages of the Annual Performance Assessment Report of the applicant for the period from 01.01.2010 to 31.12.2010.
3. **Annexure A3** – True copy of the relevant pages of the Annual Performance Assessment Report of the applicant for the period from 01.01.2011 to 31.12.2011.
4. **Annexure A4** – True copy of the relevant pages of the Annual Performance Assessment Report of the applicant for the period from 01.01.2012 to 31.12.2012.
5. **Annexure A5** – True copy of the relevant pages of the Annual Performance Assessment Report of the applicant for the period from 01.01.2013 to 31.08.2013.
6. **Annexure A6** – True copy of the relevant pages of the Annual Performance Assessment Report of the applicant for the period from 01.09.2013 to 31.12.2013.
6. **Annexure A7**– True copy of the order No.HQ:ADMN:4.20(3) dated 17.12.1977 issued by the Department of Space.
8. **Annexure A8** – True copy of the Office Memorandum No.HQ:ADMN:4 20(3) dated 22.02.2008 issued by the Department of Space.
9. **Annexure A9** – True copy of the communication dated 02.11.2006 issued by the ISRO Headquarters stipulating common ACR guidelines for screening for SD to SE and SE to SF.
10. **Annexure A10** - True copy of the communication dated 17.11.2012 issued by the Senior Administrative Officer, LPSC Thiruvananthapuram to the applicant.
11. **Annexure A11** - True copy of the communication dated 22.10.2013 issued by the Senior Administrative Officer, LPSC, Thiruvananthapuram.
12. **Annexure 12** - A true copy of the representation dated 19.05.2014 submitted by the applicant before the Chairman, ISRO.

.14.

13. **Annexure R1** - Copy of brief bio-data of the applicant indicating the details of his appointment and subsequent promotions earned by him to different grades, dated 13.08.2013.

14. **Annexure R2** - Copy of Office Memorandum No.HQ:ADMN:4.20 (3) dated 22.02.1988.

15. **Annexure R3** - Copy of ISRO HQ communication No.HQ:ADMN:4.20(3) dated 19.09.1988.

16. **Annexure R4** - True copy of the Order dated 14.10.2015 of this Hon'ble Tribunal in OA No.959/2012.
