

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

**Original Application No. 21/1076/2015**

**Reserved on: 26.02.2019**

**Pronounced on: 26. 04.2019**

Between:

Y. Lakshmana Rao, S/o. Subba Rao,  
Age 55 years, Occ: Sc/Engr-E in Dept of Space,  
ADRIN Secunderabad,  
R/o. Plot No. 27, Maruthi Nagar, Sitaram Puram,  
Bowenpalli, Secunderabad – 500011.

... Applicant

And

1. Union of India, Rep. by its Secretary,  
Department of Space, ISRO Head Quarters,  
New BEL Road, Antriksh Bhavan, Bangalore – 5.
2. The Indian Space Research Organization (ISRO),  
Rep. by its Chairman, ISRO Head Quarters,  
New BEL Road, Antriksh Bhavan, Bangalore-5.
3. The Director, Advanced Data Process Research Institute (ADRIN),  
Department of Space, Mano Vikas Nagar Post, 203,  
Akber Road, Secunderabad – 500 009.

... Respondents

Counsel for the Applicant	...	Dr. P.B. Vijaya Kumar
Counsel for the Respondents	...	Mr. V. Vinod Kumar, Sr. CGSC

***CORAM:***

***Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)***

***Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

***ORDER***

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

2. Applicant is challenging the decision of the respondents in not promoting him as Sci/Engr. SE.

3. Brief facts are that the applicant joined the respondents organisation as Technical Asst-B in 1988 and rose to the level of Sci/Engr. SD in 2004. Thereafter, he was due to be promoted as Sci/Engr SE in 2008 but was not

considered by the screening committee/DPC till 2014. On 1.7.2014 applicant was promoted as Sci/Engr SE. Applicant made several representations to consider his promotion from 1.7.2009 and as his request was not considered, the OA has been filed.

4. The contentions of the applicant are that the screening committee has usurped the powers of the DPC and prevented the applicant from appearing in the DPC on several occasions without giving reasons and by not evaluating his case on an objective basis. Its functioning has been against the guidelines of the letter issued by ISRO on 2.11.2006. Although the applicant was allowed to appear before the DPC in 2011 & 2012, he was not considered under the dictates of the Center Director. Applicant has the track record of securing 4 consecutive promotions @ one promotion for every 3/4 years. Applicant has contributed significantly to DDSP programme and that though he has acquired additional qualification of B.Tech yet his promotion to the grade of Sci/Engr SE has been delayed by nearly 6 years. In a similar case, CAT Bench of Ernakulam in OA 47/2011 has favoured the applicant therein. Even in Dev Dutt case Hon'ble Apex Court has ordered retrospective promotion and therefore the applicant need also to be considered similarly.

5. Respondents oppose the OA by contending that the applicant was accommodated at ADRIN (Advanced Data Processing Research Institute) Secunderabad in 1996 on request transfer from Bangalore. He has been promoted from Technical Asst B to Scientist/Engineer –SE as per rules prevalent in the respondents organisation. Applicant got an overall grading of B+/A- which implies tending to be very good in 2006. He was due for promotion from Sci/Eng SD to Sci/Eng SE in 2008 after completing the residency period of 4 years in Sci/Eng SD. While promoting employees to the next higher grade

APAR, work report, interview performance, recommendation of superior etc are considered. Accordingly the details of the applicant were placed before the screening committee which decides as to whether the case can be recommended for consideration of DPC. As the applicant could not measure up to the required standards he could not clear screening committee till 2011 but when he cleared the screening committee in 2011 and 2012 he did not fare well in the DPC and hence was not promoted. Ultimately, he was selected in 2014 after being screened in by the screening committee and cleared by DPC. Selection is not only based on APAR but other parameters. Respondents have a merit promotion scheme and according to the scheme if an employee completes the residence period he will be promoted based on APAR and other performance parameters. Applicant case was accordingly dealt and promoted when he was found fit.

6. Applicant filed a rejoinder and the respondents filed an additional reply to the same. We have gone through the same. Heard both the counsel and perused the documents/material papers submitted.

7. I) The dispute is about not promoting the applicant from the grade of Sci/Eng SD to Sci/Eng SE. The promotion is from Group B cadre to Group A cadre. In other words the promotion is to a position of higher responsibility. Applicant claims that the reporting, reviewing and accepting officers have not properly written the APAR in 2006 without grasping their intrinsic significance. He claims that the reporting officer has given a grading which is tending to being excellent and the reviewing officer while agreeing to the same has graded the applicant as tending to being good which is illogical. Counter signing officer accepting the same is unreasonable. At this juncture it need to be pointed out that the reviewing officer is independent to make his own grading taking an overall

view of the performance of the applicant and the grading given by the reporting officer. Similarly, the counter signing authority.

II) Respondents have developed an elaborate system of setting up a screening committee which filters the candidates based on APAR, performance , contributions made etc and then allows them to appear before DPC. To usher in objectivity, APARs have been allotted marks based on the grading as under:

Grade	Marks
A+ Brilliant	10
A Outstanding	9
AA- Tending to Outstanding	8
A- Very good	7
B+ Good	6
B Average	5
B- Just worth retaining	4
C- Not worth retaining in service	2

Further the Screening Committee considers the following parameters in clearing the candidates to appear before the DPC.

1. Biodata of the employee
2. APAR
3. Work report for the relevant period
4. Recommendation of the office
5. Any special contribution

Keeping the above in view and the respondents screening guidelines, the employees who appear before the screening committee would be allowed to appear before the DPC by ordering as under:

1. Screened in --- recommended to appear before DPC
2. Relook after 6 months – employee to appear before next screening committee with fresh data
3. Screened out --- Employees to appear after 1 year before the screening committee with fresh records.

III) Candidates who are screened in by the screening committee appear before the DPC where in the candidate is either selected or deferred or kept in cooling off mode. Deferred would mean that the employee shall appear before the DPC after one year. When the employee is differed twice then he will be cooled off for 2 years before being allowed to appear again before the DPC. The DPC considers work records, APAR, recommendation of Division Head, Papers /technical papers submitted, work quality, leadership qualities, willingness to shoulder higher responsibilities, thought clarity, professional approach, skills possessed and being abreast of latest developments in the domain of work in evaluating the performance of the candidates.

IV) Therefore, as can be seen from the above, respondents have developed an objective system of assessment at two levels in considering employees for promotion. Applicant alleging that the screening committee has not properly evaluated his case though he got APAR which would enable him to appear him to be cleared for DPC does not stand to reason, as the screening committee not only considers APAR but other factors. These norms have been applied to all other employees including the applicant. The applicant was not discriminated. Based on the guidelines issued by ISRO performance of the applicant was screened over the years till he got promoted in 2014, confirms the dispassionate view of the respondents. Applicant has to be successful in complying with the guidelines laid down for promotion. If not he has to keep trying and for that the respondents have evolved a system of screening wherein based on performance the employee is allowed to come back for screening after certain intervals of time.

Sl.No	Review date	No. of years	Screening result
1	1.7.2008	4	Relook after 6 months
2	1.1.2009	4.5	Screened out
3	1.1.2010	5.5	Relook after 6 months
4	1.7.2010	6	Relook after 6months
5	1.1.2011	6.5	Screened in –deferred in interview
6	1.1.2012	7.5	Screened in – deferred in interview
7	1.1.2013	8.5	Cooling off
8	1.1.2014	9.5	Screened in –promoted w.e.f 1.7.2014

IV) Applicant claimed that the screening committee did not give reasons for rejecting his case. It is not true since the screening committee has adduced the reason as under:

*“After considering the ACRs, work report, recommendations of the divisional head and other relevant facts the recommendations are made”*

Applicant has sought the minutes of the screening committee to which respondents did reply stating that, they do not have the records. Usually records are preserved for certain length of time and not beyond. Besides, it is pertinent to note that it is the decision of a committee and not that of a single individual to allege bias. This tribunal cannot sit on judgment of the findings of the expert committees as observed by the Hon’ble Apex Court in *Dalpat Abasaheb Solunke v. B.S. Mahajan*, (1990) 1 SCC 305 as under:

*12. It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasise that it is not*

*the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee, which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction.*

Moreover, after participating in the process of selection and finding fault with the same on being unsuccessful is bereft of logic. If the applicant had any difficulty with the processes and procedures, of which he was a beneficiary over the years, and only after he could not make it to the grade of Sci/Eng –SE, finding fault with the processes and procedures involved is not in the realm of reason. In fact, such applications should not be entertained since they question the integrity of the processes and procedures without any rational basis. Hence, the relief sought by the applicant is a difficult proposition to be considered in the words of the Hon’ble Supreme Court in a catena of judgments as under:

*i) In Om Prakash Shukla v. Akhilesh Kumar Shukla, 1986 Supp SCC 285, the*

Apex Court in no uncertain terms held as under:-

*24. Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination.*

ii) Again, in *Union of India v. N. Chandrasekharan*, (1998) 3 SCC 694, the Apex Court has held as under:-

*It is not in dispute that all the candidates were made aware of the procedure for promotion before they sat for the written test and before they appeared before the Departmental Promotion Committee. Therefore, they cannot turn around and contend later when they found they were not selected by challenging that procedure and contending that the marks prescribed for interview and confidential reports are disproportionately high and the authorities cannot fix a minimum to be secured either at interview or in the assessment on confidential report*

(iii) The decision in *Om Prakash Shukla* (supra) had been referred to again in the case of *Chandra Prakash Tiwari v. Shakuntala Shukla*, (2002) 6 SCC 127 and the Apex Court has held in *Om Prakash Shukla v. Akhilesh Kumar Shukla* (1986) Supp SCC 285, a three-Judge Bench of this Court laid down in no uncertain terms that when a candidate appears at the examination without protest and subsequently found to be not successful in the examination, question of entertaining a petition challenging the said examination would not arise.

V) Further by acquiring additional qualification an employee can be considered for fast track promotion up to the level of Sci/Eng –D. As the applicant has already got into this grade, he was given a lump sum financial grant of Rs 8000. Hence the applicant asserting that despite acquiring additional qualification he was not extended the benefit of early promotion does not hold water. Respondents have been fair enough to grant the eligible lump sum financial grant.

VI) The respondents have developed a policy of having a screening committee and a DPC to grant promotions. This is a policy matter prevailing



over the years and hence, the Tribunal cannot interdict policy matters unless policy is proven to be malafide, detrimental and against the tenets of law. Observations of the Hon'ble Supreme Court are lucid in the matter and have to be followed as explained in P.U. Joshi & Ors. Vs. The Accountant General, Ahmedabad & Ors., 2003 (2) SC ATJ 624, which are as under:

10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State subject to course, to the limitations or restriction envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by underrating further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/ posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

Therefore, terming the policy as illegal by the applicant is untenable. The committees have evolved a transparent and elaborate system of evaluation over the years and all the eligible employees are subjected to the same processes. Even the applicant has risen from technical Asst B to Sci/Eng-SD through the same process for which he has no complaints. To reiterate, applicant rose in the ranks because of the same policy. When the promotion to Sci/Eng/SE was delayed due to his own inadequacies, terming the policy as illegal is not in the realm of reason. Alleging that the Director of the centre has stonewalled his promotion is unfair since he is one of the DPC members and it is the decision of the committee. Having got promotions in the past does not imply that the applicant has to be automatically promoted in future too. Promotions are based on many parameters like upgrading ones knowledge, special contribution, leadership qualities, performance in a competitive environment, interview performance etc. Every promotion is a testing occasion and the hurdle has to be necessarily cleared to get promoted. More so, when one is considered from Group B to the higher grade of Group A. The applicant definitely has a right to be considered but has no right to be promoted since it involves various parameters as expounded supra. True, the applicant getting promotions in the past could be a favourable parameter but cannot be the only parameter to consider him for promotion. Applicant did contribute as a member of a team to the DDSP project but individual brilliance is the hall mark of an achiever. Promotions are not to be demanded, instead ones work should make the management take notice and grant. That is the spirit in which employees have to work. The case decided by the Hon'ble Ernakulam Bench of this tribunal is not relevant since the it was decided for not communicating the remarks in APAR. In the present case it is not just the APAR but the overall performance of the

applicant which had to be reckoned. Similarly the decision in OA 420/2013 by this Tribunal is not relevant since it again relates to non placement of APAR before DPC which is not so in the present case.

VII) To be specific, the system of evaluation has been transparent and objective by even quantifying the APAR grading and giving opportunity to the employees to try for promotion by bringing in concepts of screening in, deferred, cooled, screened out etc . The applicant has not brought out any instances nor submitted documents which establish that the respondents were prejudiced against him in denying the promotion. Moreover, the case is about a promotion pertaining to 2008 and OA was filed after 7 years in 2015. Many years have lapsed making the claim stale. Any decision of the tribunal should not upset the matters settled years before. Hon'ble Supreme Court in Union of India & Ors v C Griija & Ors in Civil Appeal No.1577 Of 2019 has observed that"

"...it is clear that the claim of the applicant for inclusion of her name in the panel, which was issued on 09.01.2001 and for the first time was raked up by her, by filing representation on 25.09.2007, i.e., after more than 06 and half years. The claim of inclusion in the panel had become stale by that time and filing of representation will not give any fresh cause of action. Thus, mere fact that representation was replied by Railways on 27.12.2007, a stale claim shall not become a live claim. Both Tribunal and High Court did not advert to this important aspect of the matter. It is further to be noted from the material on record that after declaration of panel on 09.01.2001, there were further selection under 30% promotion by LDCE quota, in which the applicant participated. In selection held in 2005 she participated and was declared unsuccessful. With regard to her non-inclusion in panel in 2005 selection, she also filed O.A. No. 629 of 2006 before the Tribunal, which was dismissed. After participating in subsequent selections under 30% quota and being declared unsuccessful, by mere filing representation on 27.09.2007 with regard to selection made in 2001, the delay and laches shall not be wiped out." The bench then allowed the appeal against the orders of the Tribunal and the High Court observing that they ought not to have entertained the stale claim.

Again, in the context of a stale claim, Hon'ble Apex Court has observed in Union of India and Others Vs. Chaman Rana in Civil Appeal No(S). 2764 of 2018 arising out of SLP (C) No.1123 of 2018 and Union of India and Others Vs. Gulshan Kumar Sharma which was reported in Civil Appeal No(S).2763 of 2018 arising out of SLP (C) No.1118 of 2018 as under:

9. Manifestly, the cause of action first arose to the respondents on the date of initial supersession and again on the date when rejection of their representation was communicated to them, or within reasonable time thereafter. Even if the plea based on Dev Dutt (supra) be considered, the cause of action based thereon accrued on 12.05.2008. There has to be a difference between a cause of action and what is perceived as materials in support of the cause of action. In service matters, especially with regard to promotion, there is always an urgency.

The aggrieved must approach the Court at the earliest opportunity or within a reasonable time thereafter as third party rights accrue in the meantime to those who are subsequently promoted. Such persons continue to work on the promotional post, ensconced in their belief of the protection available to them in service with regard to seniority. Any belated interference with the same is bound to have adverse effect on those already promoted affecting their morale in service also. Additionally, any directions at a belated stage to consider others for promotion with retrospective effect, after considerable time is bound to have serious administrative implications apart from the financial burden on the government that would follow by such orders of promotion.

10. As far back as in P.S. Sadasivaswamy vs. The State of Tamil Nadu, (1975) 1 SCC 152, considering a claim for promotion belated by 14 years, this Court had observed that a period of six months or at the utmost a year would be reasonable time to approach a court against denial of promotion and that it would be a sound and wise exercise of discretion not to entertain such claims by persons who tried to unsettle the settled matters, which only clog the work of the court impeding it in considering genuine grievances within time in the following words :"

The applicant having appeared in the screening committees over some years and being unsuccessful approaching the Tribunal after considerable lapse of time is in defendable, as observed by the Hon'ble Supreme Court above.

We have also observed that the respondents have objectively dealt with the promotions of the applicant without any malice over the years as spelt out in paras supra. Based on his overall performance the committees concerned have promoted him to the post of Sci/Eng /SE in 2014.

VIII) Thus based on the aforesaid, we do not find any merit in the OA warranting intervention of the Tribunal. Hence the OA is dismissed with no order as to costs.

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

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

Dated, the 26<sup>th</sup> day of April, 2019

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