

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
CIRCUIT SITTING : INDORE**Original Application No.201/00152/2017**

Jabalpur, this Wednesday, the 13th day of February, 2019

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Radhe Shyam Chaubey, S/o Shri Ramsurat Chaubey, Age – 53 years, Occ. Govt. Service, R/o D-12, RRCAT Colony, Indore (M.P.) 452013
-Applicant

(By Advocate – Shri Akhil Godha)

V e r s u s

1. Secretary, Department of Atomic Energy through Secretary, Department of Atomic Energy, Anushakti Bhavan, CSM Marg, Mumbai (Maharashtra) 400001.
2. The Director, Raja Ramanna Centre for Advance Technology (RRCAT), Indore, Distt. Indore (M.P.) 452013.
3. The Chief Administrative Officer, Raja Ramanna Centre for Advance Technology (RRCAT), Indore, Distt. – Indore (M.P.) 452013.
4. The Reporting/Reviewing Authority, Dr. Manoj Kimar, Scientist Officer G, LMPD, Raja Ramanna Centre for Advance Technology (RRCAT) Indore, Distt.-Indore (M.P.) 452013 **- Respondents**

(By Advocate – Shri Kshitij Vyas)

(Date of reserving order : 20.12.2018)

O R D E R

By Navin Tandon, AM.

The applicant is aggrieved by the grading given to him in Annual Performance Assessment Report (APAR) of various years.

2. The applicant has made the following submissions:

2.1 The applicant was initially appointed on 01.08.1984 as a Scientific Officer Group 'C' (SO-C) and was promoted as Scientific Officer Group 'A' (SO-A) on 01.08.1989. Since then he has not been given any promotion or any additional benefits for which he is entitled.

2.2 The APAR from the year 2009 to 2015 were not prepared by the respondents within the time limit as prescribed in the Office Memorandum of DoP&T dated 23.07.2009 (Annexure A-2) and 16.02.2009 (Annexure A-3).

2.3 He being an employee of Department of Atomic Energy (DAE) is entitled for the benefit of Performance Related Incentive Scheme (PRIS) from the year 2008 and PRIS (G) from 2009. However, he has not been granted these incentives on the basis of ACR/APAR, which were illegally prepared.

2.4 He filed several representations (Annexure A-6 collectively) regarding downgrading of his APAR. But, none of these representations have been decided by the respondents.

2.5 The respondent No.3 has rejected the applicant's representation on 22.07.2016 (Annexure A-7) saying that Reporting and Reviewing Officer can be the same officer.

3. The applicant has sought for the following reliefs:

“8. **Relief Sought** :- In view of the above submission made, the applicant prays for the following relief/reliefs:

8.1 To quash the APARs of the applicants as being illegal and contrary to the guidelines issued by the DoPT and direct the respondent to promote the applicant to the next higher post/grade with all consequential benefits and quashed the Annexure A/7.

8.2 To direct the respondent to grant the benefit of PRIS from the year 2008 and PRIS G from the year 2009 with interest which has not been granted to the applicant on the basis of the ACR's/APAR which were illegally prepared,

8.3 To call the record of the present case,

8.4 Award the cost of application,

8.5 grant any other relief/reliefs as it deems fit in the interest of justice in the facts and circumstances of the case.”

4. The respondents have filed their reply in which the following submissions have been made:

4.1 The respondent organisation, i.e. Raja Ramanna Centre for Advanced Technology (RRCAT) is a constituent unit of the Department of Atomic Energy.

4.2 The promotion of Scientific and Technical (S&T) staff of DAE is covered under the scheme called Merit Promotion Scheme (MPS) (Annexure R-3). The salient features of the MPS are as under:

“4.2.1 Promotions under MPS is delinked from availability of higher posts in the S&T cadre.

4.2.2. A Minimum Eligibility Period (MEP) coupled with APAR gradings is prescribed inter alia for consideration for promotion from one level to the next higher level.

4.2.3 Cases of all S&T employees who are falling within the zone of consideration of 3/4/5/6 years, as the case (MEP) may be, are considered/screened by a Committee to see whether they possess prescribed/requisite APAR grading(s) to meet the norms set for promotion to the next higher grade.”

4.3 The applicant enjoyed the benefit of his promotion under the aforesaid MPS within a span of five years from the date of his joining service to his next higher grade of Scientific Officer-D (SO-D) w.e.f. 01.08.1989.

4.4 As per the extant promotion norms, a Scientific Officer-D could be considered for promotion to next higher grade of SO-D w.e.f. 01.08.1993 based of the MEP. Accordingly, his candidature was considered thereafter each and every year for promotion to the next higher grade i.e. SO-E. The applicant has not earned prescribed ACR/APAR gradings due to his own performance and contribution to the programme of the Department subsequent to his first promotion earned w.e.f. 01.08.1989. Thus, the applicant was not fulfilling the norms prescribed for such promotion and, therefore, he screened out.

4.5 An employee who is screened out at any stage becomes aware of his/her ACR grading when his/her own contemporaries are screened in for consideration for promotion in a given MEP. Thus, the applicant was apparently aware from the year 1993 onwards that he was

being screened out when others except his were called for promotional interview from year to year.

4.6 The applicant was issued advisory during the ACR period 1993 to 2008 (Annexure R-4 collectively) time to time regarding his below normal and non satisfactory performance. With the introduction of APAR, the gradings were also conveyed to the applicant as per the prescribed orders of the Government of India. Thus, the applicant cannot allege that he was unaware of his ACR grading when his contemporaries were considered for promotion, within a given period of time.

4.7 The applicant had earlier approached this Tribunal in OA No.201/550/2015 claiming benefit of ACP/MACP scheme, which was dismissed vide order dated 07.07.2015 (Annexure R-5), as his claim for grant of financial upgradation under the MACP scheme with concurrent existence of MPS for his cadre, could not be substantiated.

4.8 The applicant has, thereafter, filed W.P No.5447/2015 before the Hon'ble High Court of Madhya Pradesh, Bench at Indore, which is pending as on date.

4.9 The applicant submitted a representation dated 16.03.2016 (Annexure R-2), wherein he has requested to ignore the APAR from 2009-10 to 2014-15, being illegal and contrary to the guidelines of DoP&T and to promote him to the next higher grade.

4.10. The said representation dated 16.03.2016 was disposed of by the competent authority vide communication dated 22.07.2016 (Annexure A-7).

5. We have heard the learned counsel for the parties and gone through the pleadings and documents available on record.

6. Learned counsel for the applicant drew our attention to DoP&T OM dated 23.07.2009 (Annexure A-2), wherein a time schedule has been given for preparation and maintenance of APAR. It has been urged that the dates for various stages of completing APAR, viz; distribution of blank APAR forms, submission of self-appraisal, submission by Reporting Officer/Reviewing Officer and acceptance of Accepting Authority etc. has been specified. It has been submitted that in the case of the applicant, the dates have been violated in each and every case, as can be seen in the various APARs filed as Annexure A-5 collectively. Against each of the APARs, the applicant submitted his representations on 11.10.2010, 13.07.2011, 28.09.2012, 18.11.2013, 19.09.2014, 24.08.2015. But the same have not been decided. Only the last representation dated 16.03.2016 has been decided by the respondents vide Annexure A-7.

7. Learned counsel for the applicant cited the order of Principal Bench of this Tribunal in OA No.1233/2014, dated 28.04.2015

(Shri Gunjan Prasad vs. Govt. of India), wherein it has been held that the APARs filled after the prescribed timeline given in the DoP&T OM dated 16.02.2009, are not tenable and illegal.

8. Learned counsel for the respondents took us through the APARs of various years, which were filed as Annexure A-5 (colly.) with the O.A. The applicant has acknowledged that he has been communicated overall gradings and the relevant remarks for the year 2009-10 on 21.04.2011, 2012-13 on 18.09.2013, 2013-14 on 18.09.2014 and 2014-15 on 21.08.2015.

9. Learned counsel for the respondents drew our attention to the provisions regarding the Reporting/Reviewing Officer, which has been mentioned in the DoP&T OM dated 23.09.1985 (Annexure R-6). Para 2.5 of the said OM reads as under:

“2.5 Where for a period of Report, there is no Reporting Officer with the requisite experience to initiate the Report, the Reviewing Officer himself may initiate the Report as a Reporting Officer provided the Reviewing Officer has been the same for the entire period of Report and he is in a position to fill in columns to be filled in by the Reporting Officer. Where a Report is thus initiated by the Reviewing Officer, it will have to be submitted by him to his own superior for Review if there is a superior officer to him.”

10. Regarding the timelines prescribed in DoP&T's OM dated 23.07.2009, it is seen that the reporting year is mentioned as financial year. This implies that the assessment period is to end on 31st of March. Perusal of the APAR (Annexure A-5 colly.) of the

applicant indicates that the time period for assessment in RRCAT is from 01st of July of one year to 30th of June of the next year. Therefore, the dates provided in the time schedule of DoP&T's OM dated 23.07.2009, cannot be taken as an absolute date and will need to be suitably adjusted in the case of the applicant, i.e. shifting by three months.

11. Further perusal of APARs filed along with the O.A indicate that the activities have been completed by all the authorities much before the adjusted time schedule prescribed in the aforesaid DoP&T OM.

12. We have also perused the representations (Annexure A-6 collectively) sought to be filed by the applicant contesting his APAR gradings. It is seen that in none of the representations, the applicant has raised the issues regarding work allotted to him, quality of work output done by him during the assessment year, the remarks by the Reporting/Reviewing/Head of the Department, which he would like to contest. In fact, the representations mentioned in Annexure A-6, did not even correlate to the APARs of the relevant year, which should have been filed within a specified period of 15 days after having been intimated about the same.

13. The applicant has raised the issue regarding the same officer being the Reporting and Reviewing Authority. This issue has been addressed to by the respondent vide Annexure A-7. The learned counsel for the respondents has highlighted the fact that the DoP&T OM dated 29.05.1972 (Annexure A-1) mentions in Para 7.1 that the confidential report of every employee should contain the assessments of more than one officer. In the case of the applicant, the assessment is done by three or four officers and, therefore, there is no irregularity in preparation of the APARs.

14. From the foregoing, it is clear that the APARs of the applicant have been written within the time schedule and by three or four different officers, which meets the requirement stated in the DoP&T OM. Further, all the APARs and their grading, have been communicated to the applicant, who has acknowledged the same. The applicant has not submitted his representation against any of the APARs within 15 days, as prescribed under the extant guidelines. Therefore, the case of the applicant that the APARs may be quashed and set aside, does not have any merit.

15. Accordingly, the O.A is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member
am/-

(Navin Tandon)
Administrative Member