

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/01039/2017

Jabalpur, this Thursday, the 28th day of March, 2019

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

Radheshyam Chaubey,
SOD S/o Shri Ramsurat Chaubey,
Age 54 Address: D-12,
RRCAT Colony,
Indore (MP) 452013 (MP) -Applicant

(By Advocate –**Shri Prateek Patwardhan**)

V e r s u s

1. Union of India,
Through Secretary,
Department of Atomic Energy
CSM Marg,
Anushakti Bhawan,
Mumbai 400001

2. Director,
Raja Ramanna Centre for
Advanced Technology
(RRCAT) Indore (MP) 452013

3. Chief Administrative Officer,
Raja Ramanna Centre
for Advanced Technology (RRACT)
Indore (MP) 452013 - Respondents

(By Advocate –**Shri Kshitij Vyas**)

(Date of reserving the order: 14.03.2019)

O R D E R

By Ramesh Singh Thakur, JM:-

This Original Application has been filed by the applicant challenging the action of the respondents for non-granting of benefit of PRIS-O and PRIS-G for the year 2015-16 and 2016-17 to the applicant.

2. The applicant has sought for the following reliefs:-

“8.1 To call the relevant records of the case from the respondents.

8.2 To issue direction to the non-applicants to ignore the grading in APARs for the years 2015-16 and 2016-17, give benefit of PRIS-O and PRIS-G for the years 2015-16 and 2016-17 to the applicant.

8.3 To allow this application with costs.”

3. The case of the applicant is that the applicant is working as a Scientific Officer in Raja Ramanna Centre for Advanced Technology and is a Group ‘A’ officer. The respondent-department has engaged the applicant in research and development in Nuclear Front-Line Research Areas of Lesser Particles Accelerators and related Technologies. The Department of Personnel and Training (DoP&T) which is a nodal Ministry of Government of

India for formulation and implementation of personnel policy as well as selection plan and development of human resources engaged in public services has introduced a new system of writing ACRs of employees as Annual Performance Appraisal Report (APAR). As per guideline issued by DoP&T the employees getting grade between 8 and 10 will be rated as ‘Outstanding’, those getting grade between 6 and 8 will be rated as ‘Very Good’, those getting grade between 4 and 6 will be rated as ‘Good’, and those getting grade below 4 will be given as ‘Zero’. A copy of guideline is annexed as Annexure A/1.

4. The respondent-department has devised their own way for writing APAR of employees in complete ignorance to the guidelines issued by the DoP&T. As per the grading system prevailing in the respondent-department, grade between 9 and 10 is regarded as ‘Outstanding’, between 8 and 9 is ‘Tending to Outstanding’ between 7 and 8 ‘Very Good’, between 6 and 7 ‘Average’, between 4 and 5 ‘Poor’ and less than 4

‘Unfit’. Accordingly, for the year 2015-16, in the APAR, the applicant has been graded as ‘B’ (Average) and has been given score of 5.2, whereas as per guideline issued by the DoP&T, the applicant should have been graded as ‘Good’. For the year 2016-17, the applicant was graded as 5.2 by Reporting Officer, 5.2 by the Reviewing Officer and the applicant has been downgraded to 4.9 by the Accepting Officer and has been graded as ‘C’ (poor), whereas as per guideline issued by DoP&T, the applicant has to be rated as ‘Good’. Copy of APAR for the years 2015-16 and 2016-17 are annexed as Annexure A/2 and A/3 respectively.

5. The Department of Atomic Energy has introduced another scheme called as Performance Related Incentive Scheme (PRIS). As per circular issued by the Department of Atomic Energy all employees will be entitled to one increment if the employee is graded as ‘Good and Above’. A copy of circular dated 01.05.2009 (Annexure A-4).

6. The applicant has been denied the benefit of PRIS(O) and PRIS(G) for the years 2015-16 and 2016-17 on the ground that APAR for respective years of the applicant are not upto the mark i.e. 'poor'.

7. The applicant submitted a representation claiming the benefit of PRIS-O and PRIS-G from the due date. But the respondent-department has not given any reply to the said representation. The copy of representation is annexed as Annexure A/5. Hence this Original Application.

8. The respondent-department has filed their reply. It has been submitted by the replying respondents that the applicant has misconceived the facts and the instructions and the Original Application is devoid of any merit. The replying respondents have submitted that the applicant joined respondent-organization (RRCAT, Indore) on the post of Scientific Officer-C (Group A Central Services-Scientific Cadre) w.e.f.01.08.1984. The extant instructions governing the issue related to Performance Related Incentive Scheme (PRIS) of the DAE inter alia prescribes

that an employee should earn APAR grading of 'Good', (in case of PRIS-O), 'Very Good', (in case of PRIS-G), in the previous assessment year.

9. It has been submitted by the replying respondents that the applicant does not fulfill its condition and therefore the applicant is not eligible for appointment of PRIS for the financial year 2008. The respondent-department has submitted that the guidelines issued by the Department of Personnel and Training and DAE regarding the minutes of ACR-APRAR are being complied with in all cases of employees.

10. It has been specifically submitted by the replying respondents that the respondents have devised the grading system broadly based on DOPT guidelines and at the same time keeping in view the subject nature of job done by the scientific / personnel slight deviation in the structure was made (Annexure A/2). The respondents have submitted that the extent instructions governing in the issue related to performance related incentive system (PRIS) of DAE inter

alia prescribes that any employee should earn APAR grading of 'Good' in case of the PRIS-O, 'Very Good' (in case of the PRIS-G), in the previous assessment year for grant of PRIS in the subsequent financial year. The applicant does not fulfill this condition and therefore not eligible for payment of PRIS from the financial years 2008 onwards. The respondents have further submitted that the applicant has rightly graded as per the performance for the year 2015-16 and 2016-17 as per the guideline issued by the DOPT and at the same time keeping in view the special nature of job done by the Scientific/technical personnel slight deviation in the grading structure was made.

11. It has been submitted by the replying respondents that the applicant has made the representation dated 01.11.2017 to the respondents' office and without waiting the disposal of the representation, the applicant approached this Tribunal. So, this Original Application is not maintainable.

12. The replying respondents has specifically submitted that the representation in the matter has been disposed of by the respondents vide speaking order dated 05.03.2018 which is annexed as Annexure R/2. The replying respondents have also submitted that the applicant has also filed Writ Petition No.5447/2015 before the Hon'ble High Court of Madhya Pradesh which is pending as on date. So, the instance Original Application on the similar matter is not maintainable.

13. The applicant has filed the rejoinder and has reiterated its earlier stand. The applicant has submitted that the applicant has relied upon the circular dated 16.02.2009 issued by the DoPT and the respondent-department has violated the said OM by devising its own way of grading and writing APAR. It has been submitted by the applicant that the respondent-department has not filed any copy of order or letter to show that respondent-department has sought any permission from the DOPT to make such deviation. The guideline issued by DOPT is mandatory

and each department is bound to follow the guidelines issued by DoPT. The guidelines as provided under Right to Information Act are annexed as Annexure A/6. It has been submitted by the applicant that the said deviation has also not been communicated to any of the employees. If any deviation is made by any department from the normal rule then such change must be communicated to the employees so that an employee becomes aware about the said new guidelines and perform accordingly. So, the said deviation is violative of principles of natural justice, fair play and against Article 14 and 21 of the Constitution of India and such deviation is illegal. It has been further submitted by the applicant Annexure R/1 dated 05.03.2018 cannot be said to be speaking order as no reason has been assigned in the said order for denying the benefit of PRIS-O and PRIS-G to the applicant. The applicant has submitted that the Writ Petition No.5447/2015 is the matter regarding the financial upgradation under MACP

scheme. The copy of Writ Petition is annexed as Annexure A/7.

14. The respondent department has filed additional reply to the rejoinder filed by the applicant. The respondent department has specifically submitted that the Government of India (Allocation of Business) Rules 1961, framed under Clause 3 of Article 77 of the Constitution of India, the Rules have been framed by the different department, whereby as per DOPT instructions the Department of Railway, the Department of Atomic Energy has been made exception. So the present department comes under the exception department and is not bound by the instructions of the DOPT. So, the conditions of service of Central Government employees (excluding those under the control of Railways, the Department of Atomic Energy, the erstwhile Department of Electronic and the Department of Space and Scientific and Technical under the Department of Defence and Research and Development is applicable. Therefore, the Department of Atomic Energy has been

specifically excluded from the ambit of scope of business allocated to the DOPT. The respondent-department has followed its own policy in promotion of Scientific and Technical grades based on the need to develop a cadre of competent Scientist and Technologist. This scheme is known as Merit Promotion Scheme. The respondents have specifically submitted that MACP is not applicable to the applicant.

15. We have heard the learned counsel for both the parties and have also gone through the documents attached with the pleadings.

16. From the pleadings, the main case of the applicant is that regarding the APAR, the respondent-department has not followed the guideline issued by the DOPT as per Annexure A/1. The main contention of the applicant is that the respondent-department has devised its own method for the purpose of APAR which is in violation of the instructions issued by the DOPT as per Annexure A/1. It is submitted by the applicant that if the instructions issued by

the DOPT is followed then the grading of the applicant is to be enhanced and the applicant is to be considered for further enhancement on the careers scheme. On the other side, the respondent-department has submitted that the respondent-department is the exception to the guideline issued pertinent to APAR by the DOPT. The replying respondent has specifically mentioned the relevant portion of Government of India (Allocation of Business) Rules 1961, which has been framed under Clause 3 of Article 77 of the Constitution of India which are as under:-

"I. Recruitment, II, Promotion and Morale of Services

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2. General question relating to recruitment, promotion and seniority pertaining to Central Services except Railways Services and services under the control of the Department of Atomic Energy, the erstwhile Department of Electronics, the Department of Space and the Scientific and Technical Services under the Department of Defence Research and Development.

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5. Recruitment of ministerial staff for the government of India Secretariat and its attached offices except that for the Department of Railways, the Department of Atomic Energy, the erstwhile Department of Electronics, the Department of Space.

6. *Appointment of non-Indians to Civil posts under the Government of India except posts under for the Department of Railways, the Department of Atomic Energy the erstwhile Department of Electronics, the Department of Space.”*

17. The replying respondents have specifically submitted that the respondent-department has framed the scheme which is known as Merit Promotion Scheme. The success of the scheme in identifying and ensuring promotion of talented scientists at a faster rate to reach the top at the shortest possible time has been proved during the last more than six decades. Promotions are made in DAE from one grade to the other higher grade not on the basis of vacancies but on the basis of development and work of the individual scientific research/technical personnel. Under the scheme, a Scientific officer/Engineer or a technical personnel deserving promotion because of the merit of his work and not based on the available vacancies. A suitable post will always be created at the level required for accommodating the promotion. The comprehensive guidelines are annexed as Annexure R/3. The counsel for

the replying respondents has also relied upon the judgment passed by the Hon'ble Apex Court in the matter of ***Prabhat Ranjan Singh*** vs. ***R.K. Kushwaha*** decided on 07.09.2018 in Civil Appeal No.9176/2018 arose out of SLP (C) No.22444 of 2017. A copy of which is annexed as Annexure R/4. From this annexure it is clear that the Hon'ble Apex Court has held that the validity of the exception with regard to the department of Railway and Department of Atomic Energy. So, the present case is fully covered by the judgment passed by the Hon'ble Apex Court in the matter of ***Prabhat Ranjan Singh*** (supra).

18. The counsel for the applicant did not dispute regarding the judgment of the Hon'ble Apex Court in the case of ***Prabhat Ranjan Singh*** (supra) and the only argument made by the counsel for the applicant is that the instructions regarding the APAR as per Annexure A/1 has not been complied with by the respondent-department. The counsel for the applicant does not dispute regarding the assessment of the applicant as per the policy framed by the

department. So as the exception created under the Government of India (Allocation of business) Rules, 1961 framed under Clause III of the Article 77 of the Constitution of India, is legal, which has been validated by the Hon'ble Apex Court in the matter of ***Prabhat Ranjan Singh*** (supra).

19. In view of the above, we do not find any merit in the present application.

20. Resultantly, this O.A. is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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