

**Central Administrative Tribunal
Principal Bench**

OA No.4533/2014

MA No.1673/2016

With

OA No.4518/2014

MA No.3963/2014

OA No.4532/2014

MA No.3999/2014

MA No.770/2015

OA No.4623/2014

MA No.4031/2014

New Delhi, this the 28th day of March, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)**

I. OA No.4533/2014

Sh. Aabi Binju, Age 56 years,
S/o Late Sh. G.P. Binju,
R/o Flat No.339, Block-B, Pocket-05,
Vivekanand Apartments, Sector-08,
Rohini,
New Delhi-110085
(Working as Scientist)

...Applicant

(By Advocate : Shri S.K. Gupta)

Versus

1. Union of India through the Secretary,
Ministry of Water Resources,
River Development & Ganga Rejuvenation,
Shram Shakti Bhawan,
New Delhi-110001.
2. Director,
Central Soil & Materials Research Station,
Ministry of Water Resources,
River Development & Ganga Rejuvenation,
Olof Palme Marg, Hauz Khas,
New Delhi-110016.

3. Shri Murari Ratnam,
 Office of Director,
 Central Soil & Material Research Station,
 Ministry of Water Resources, River Development & Ganga
 Rejuvenation,
 Olof Palme Marg, Hauz Khas,
 New Delhi-110016.

...Respondents

(By Advocate : Shri Ravi Kant Jain)

II. OA No.4518/2014

Sh. Aabi Binju, Age 56 years,
 Research Officer,
 S/o Late Sh. G.P. Binju,
 R/o Flat No.339, Block-B, Pocket-05,
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...Respondents

(By Advocate : Shri Ravi Kant Jain)

III. OA No.4532/2014

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 S/o Late Sh. G.P. Binju,
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...Respondents

(By Advocate : Shri Ravi Kant Jain)

IV. OA No.4623/2014

Sh. Aabi Binju, Age 56 years,
 S/o Late Sh. G.P. Binju,

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(By Advocate : Shri Ravi Kant Jain)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman :-

In this batch of four OAs, the same applicant challenges a common order dated 05.08.2011, passed by the respondents. The relevant facts are that, the applicant joined the service of the respondents organisation in the

year 1985 as Research Officer (Engineering), Group 'A'. He was denied promotions for quite sometime. Ultimately, in compliance with the orders dated 11.10.2011, passed by this Tribunal in OA No.1076/2007, he was promoted to the post of Scientist 'D' in the year 2013, with effect from the year 1998. However, in the context of further promotions, his ACRs for the certain periods between 2001 to 2009 (six in number) were coming in the way. During those spells, the applicant was assessed as average by reporting officer as well as reviewing officer.

2. The applicant submitted separate representations between 01.04.2006 and 31.03.2009 vis-a-vis the six ACRs. Through a common order dated 05.08.2011, the competent authority refused to upgrade the ACRs. These four OAs are filed in respect of ACRs of the different period.

3. The applicant contends that there was absolutely no justification for the reporting officer or the reviewing officer, to assess him, at the relevant point of time, as 'Average'. He contends that he was not issued any warning or censure and the assessment as 'Average' was totally un-called for and still the competent authority did not grant the relief.

He placed reliance upon the Office Memorandum dated 05.06.1981, issued by the Government in this behalf and the judgment of Hon'ble Supreme Court in the **State of UP Vs. Yamuna Shanker Misra and Another** (1997) 4 SCC 7 and an order passed by this Tribunal dated 21.11.2014 in OA No.1189/2012.

4. The respondents filed counter affidavit opposing the OA. It is stated that the plea of the applicant that in absence of any warnings, the APARs cannot be rated as average is totally without any basis and that the competent authority has examined the representations submitted by the applicant, with reference to documents on record and relevant provisions of law .

5. We heard Shri S.K. Gupta, learned counsel for applicant and Shri Ravi Kant Jain, learned counsel for respondents.

6. In this batch of OAs, we are concerned with the gradations of the applicant for various periods between 2001 and 2009. In all of them, the applicant was rated as average while working as Senior Research Officers. On

receipt of the representations, the competent authority called for the remarks of the reporting and reviewing officers who were in service by that time and perused the record also.

7. One of the important contentions advanced by the applicant was that he could not be rated as average, in the absence of any warning or other similar admonitions, referable to the relevant point of time, issued by the competent authority.

8. We have perused the extract of the OM dated 05.06.1981. The gist thereof is that whenever an officer being reported has been issued written warning, admonition or reprimand, it shall be open to the reporting officer either to refer the same in his evaluation for the relevant period or to omit the same, depending upon the circumstances. There is nothing to suggest that in the absence of any warning, admonition or reprimand, grading of ACRs as 'Average' cannot be made. Similarly, in the judgment of Hon'ble Supreme Court in the **State of UP Vs. Yamuna Shanker Misra and Another** (supra), we do not find any observation, much less a direction, to the effect that the rating of average can be only on the strength of

any warning or admonition. The same is the case in the OA No.1189/2012.

9. Though an observation was made in the judgment in OA No.1189/2012 to the effect that the ACR was graded as average in the absence of any warning, we do not find any enunciation of principles of law, or reference to any provisions of law. We do not find any basis to interfere with the impugned order and the OA is, accordingly, dismissed.

There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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