

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A./100/4061/2014

M.A./100/2107/2019

With

O.A./100/4518/2014

M.A./100/1989/2019

O.A./100/4519/2014

M.A./100/3962/2014

M.A./100/3704/2016

O.A./100/4532/2014

M.A./100/1988/2019

O.A./100/4533/2014

M.A./100/1991/2019

O.A./100/4623/2014

M.A./100/1990/2019

O.A./100/4625/2014

M.A./100/4032/2014

New Delhi, this the 12th day of September, 2019

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

O.A./100/4061/2014

Shri Aabi Binju

Age 56 years

S/o Late Shri G.P. Binju

R/o Flat No. 339, Block-B, Pocket – 05,

Vivekanand Apartments,

Sector-08, Rohini,

New Delhi-110085

....Applicant

(Through Shri K.L. Manhas, Advocate)

Versus

1. 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 ... Respondents

(Through Shri Ravi Kant Jain, Advocate)

O.A./100/4518/2014
O.A./100/4519/2014
O.A./100/4532/2014
O.A./100/4533/2014
O.A./100/4623/2014
O.A./100/4625/2014

Shri Aabi Binju, Age 56 years, Sr. Research Officer,
S/o Late Shri G.P. Binju
R/o Flat No. 339, Block-B, Pocket – 05,
Vivekanand Apartments,
Sector-08, Rohini,
New Delhi-110085

....Applicant

(Through Shri K.L. Manhas, Advocate for applicant in all OAs)

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 & Materials Research Station
Ministry of Water Resources, River Development &
Ganga Rejuvenation,
Olof Palme Marg, Hauz Khas,
New Delhi-110016

(Through Shri Ravi Kant Jain, Advocate for respondents in
OA 4518/2014, 4519/2014, 4532/2014, 4533/2014 &
4623/2014
Shri D.S. Mahendru, Advocate for respondents in
OA 4625/2014)

ORDER (Oral)

Justice L. Narasimha Reddy, Chairman

The applicant joined the service of the Ministry of Water Resources, River Development and Ganga Rejuvenation as Research Officer (RO) on 28.06.1985. He was promoted to the post of Senior Research Officer (SRO) (which has since been equated to Scientist 'C') on 10.01.1994. He filed OA 1715/1995 pleading that he was entitled to be promoted with effect from the date on which he completed five years of service i.e. 28.06.1990. The OA was allowed and in compliance with the order passed therein, the respondents promoted the applicant to the post of SRO with effect from 28.06.1990, through order dated 15.04.2002. It is brought to our notice that the applicant has since retired from service.

2. The applicant addressed a letter dated 22.05.2009 to the CPIO of the Ministry of Water Resources with a request to furnish ACRs for the period from 1.04.1989 to 31.03.2008 (20 ACRs). In compliance of the same, the ACRs were furnished to the applicant on 27.05.2009. He found that the ACRs for the period 2001-02, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08 and 2008-09 were not upto the level of "Very Good" and were below benchmark. He made representations dated 9.06.2009 and 20.07.2009 to the competent authority with a request to upgrade the ACRs. On consideration of the same,

speaking orders were passed by the competent authority on 5.08.2011, refusing to upgrade his ACRs.

3. Obviously, not being aware of the order dated 5.08.2011, the applicant made a representation dated 8.08.2011. That was replied on 29.12.2011. He made another representation on 3.12.2012 raising certain queries. That was answered on 28.12.2012. Thereafter, he addressed a letter dated 7.02.2014 in the context of promotion to the next higher post. That was replied on 25.02.2014.

4. These OAs are filed with a prayer to quash and set aside the remarks of the reviewing officer dated 31.05.2002 in the ACR of the applicant for the period 1.04.2001 to 31.03.2002 and to quash and set aside series of orders dated 5/8.08.2011, 29.12.2011, 28.12.2012 and 25.02.2014, pertaining to the ACRs of the applicant for the years 2001-02 and 2003-04 to 2008-09.

5. Since there is delay in filing the OAs, the applicant filed Miscellaneous Applications, in each of the OAs. The applicant contends that the delay occurred as a result of illness of his wife and he has been posted at different places.

6. Respondents filed counter affidavits opposing the OAs as well as MAs. It is stated that the applicant was discharging his duties in Delhi and the various reasons mentioned by him in the MA are factually incorrect.

Extensive reference is made to the order passed by this Tribunal dated 9.07.015 in OA 1785/2012 on the issue of delay.

7. We heard Shri K.L. Manhas, for the applicant, Shri Ravi Kant Jain, for the respondents in OA Nos.4061/2014, 4518/2014, 4519/2014, 4532/2014, 4533/2014 and 4623/2014 and Shri D.S. Mahendru, for respondents in OA 4625/2014.

8. This case has an earlier history. The applicant filed in all 7 OAs pertaining to ACRs of various years. Through a common order dated 28.03.2019, this Bench dismissed them. It needs to be mentioned that the only point argued before us was that the occasion to record 'Average' in the ACR of an employee would arise only if there was any warning or admonition, and no such warning or admonition was issued to the applicant. The issue was dealt with and a finding was given. Since no other point was argued, we did not undertake further discussion.

9. The applicant filed Writ Petition No.4896/2019 before the Hon'ble High Court of Delhi against the order referable to one of the OAs. It appears that a ground was urged to the effect that the Tribunal did not deal with the various contentions raised in the OA and that the nature of disposal given to the OA was not in accordance with law.

10. It may also be relevant to mention here that the Tribunal is facing the problem of heavy pendency and to the best of its ability the old cases were taken up and disposed of. We do realize the fact that in each of the cases, very long and elaborate orders could have been passed. However, we felt it appropriate to deal with the issue concerned so that the available time can be spent to attend to other cases. On finding that the matters were being remanded in some cases twice or thrice, an appeal was made to the High Court in one of the cases to consider the feasibility of giving a finality in the Writ Petitions, to the extent possible, so that the law laid down by the High Court can be followed in other similar cases. Unfortunately, that appeal was misunderstood and the learned Division Bench of the High Court made the following observations in W.P. No.4896/2019:

“9. Unfortunately, in several cases, we have had to deal with such grievances, and considering that it is primarily for the Tribunal to deal with the issues raised by the applicant in the first instance, we have had to remand these cases back to the Tribunal.

10. We have also come across an order passed by the Tribunal, expressing its view regarding our orders remanding back cases to the Tribunal. We have no penchant to pass a remand orders, and our endeavour is to always deal with the case on its own merit. However, when such situations arise – where we find that the Tribunal has not bestowed its consideration to the grievances and submissions of the parties, we are helpless and are compelled to remand back the matter to the Tribunal only to ensure that the first round of adjudication is not rendered illusory for the applicant. We must, therefore, remand such like cases.

11. We request the Tribunal to kindly undertake course correction with regard to the manner in which it has sometimes been dealing with original applications, and to ensure that cases are properly dealt with. The orders should not reflect upon a casual approach of the Tribunal, but

should reflect due application of mind by the Tribunal to the controversies raised before it."

The Writ Petition was allowed. As of now all the OAs are remanded.

11. The Hon'ble High Court wants this Tribunal to undertake course correction with regard to the manner in which it has sometimes been dealing with the OAs to ensure that the cases are properly dealt with. We only leave it to their Lordships to ponder as to how far these comments uphold the dignity of the judiciary in general. Firstly, the Tribunal is not subordinate to the High Court and secondly, an observation of that nature would not accord with the law laid down by the Hon'ble Supreme Court. We leave the matter at that.

12. It needs to be mentioned that in the first round of litigation the arguments were advanced by Shri S.K. Gupta, learned counsel. Now the cases are being argued by Shri K.L. Manhas, learned counsel.

13. To reassure ourselves as to whether we have omitted any point argued earlier, we asked Shri S.K. Gupta, learned counsel who is present in the Court. In all fairness, he stated that all the points that were raised by him were dealt with and no aspect argued by him, was left by the Tribunal. It is the wisdom of the applicant to raise different pleas before different fora. The result is that the valuable time of the

Courts is wasted and that is only adding to the pendency of cases.

14. Reverting back to the facts of the case, the delay involved is about 800 days. Except pleading the ground of ill-health of his wife, the applicant did not mention any valid reason. Though it is also stated that he has been working at different places, the respondents categorically stated that at the relevant point of time, the applicant was working at Delhi only. Even if the applicant was working elsewhere, the Tribunal has its Benches in different parts of the country and he could approach the concerned Bench, under whose jurisdiction he was working at the relevant point of time. The final order was passed way back in August 2011 and the subsequent correspondence was repetitive. The OAs are filed in the year 2014.

15. Time and again, the Hon'ble Supreme Court has held that each day's delay has to be explained. It is not as if the applicant was not conversant with the proceedings before the Tribunal. He filed OA in the year 1995 and pursued remedies from then on. He initiated steps in respect of ACRs for years 2001-02, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08 and 2008-09 and, though the reply came from the respondents promptly in the year 2011, he did not choose to proceed in time. Strictly speaking, the MAs deserve to be dismissed.

However, since we are hearing the OAs after remand, we treat that the delay is condoned.

16. Coming to the merits of the case, the representations made by the applicant were general in nature, covering ACRs of as many as seven years. The principal contention of the applicant is that he has not been issued any warning or memo and that the Reviewing Officer was from a different area. The competent authority observed that the applicant has not placed sufficient evidence to substantiate his claim for upgradation of ACRs. Specific reference was made to the fact that he had not maintained any record of the number of software problems solved or AMCs handled. The order dated 5.08.2011 reads as under:

“WHEREAS Shri Aabi Binju, Scientist C (erstwhile Senior Research Officer) had submitted six representations dated 9.6.2009 and one representation dated 20.7.2009 addressed to the Secretary (WR) for expunction of adverse remarks of Reporting/Reviewing Officers and review of his overall ACR/APAR grading for the period from 1.4.2001-31.3.2002 (one ACR) and 1.4.2003-31.3.2004; 1.4.2004-31.3.2005; 1.4.2005-31.3.2006; 1.4.2006-31.3.2007; 1.4.2007-31.3.2008; 1.4.2008-31.3.2009 (six ACRs).

2. WHEREAS the following officers were Reporting and Reviewing Authorities relating to the ACRs/APARs of the under mentioned period:-

| Period | Name of Reporting Officer | Name of Reviewing Officer |
|--------------------|---|--|
| 1.4.2001-31.3.2002 | Dr.R.B.Gangadhar, erstwhile Joint Director, CSMRS | Dr. K.Venkatachalam, erstwhile Director, CSMRS |
| 1.4.2003-31.3.2004 | Shri Murari Ratnam, erstwhile Joint Director, CSMRS | Dr. A.K.Dhawan, erstwhile Director, CSMRS |
| 1.4.2004-31.3.2005 | Shri Murari Ratnam, erstwhile Joint Director, CSMRS | Dr. A.K.Dhawan, erstwhile Director, CSMRS |
| 1.4.2005-31.3.2006 | Shri Murari Ratnam, erstwhile Joint | Dr. A.K.Dhawan, erstwhile Director, |

| | Director, CSMRS | CSMRS |
|------------------------|---|---|
| 1.4.2006- 31.3.2007 | Shri Murari Ratnam, erstwhile Joint Director, CSMRS | Dr. A.K.Dhawan, erstwhile Director, CSMRS |
| 1.4.2007- 31.3.2008 | Shri N.Chandrasekaran, erstwhile Joint Director, CSMRS | Shri Murari Ratnam, Director, CSMRS |
| 1.4.2008- 31.3.2009 | Shri N.Chandrasekaran, erstwhile Joint Director, CSMRS | Shri Murari Ratnam, Director, CSMRS |

In order to examine the representations of the officer, in terms of existing guidelines of OPT the comments of in-service Reporting and Reviewing Officers were called for on the points raised in the representations vis-à-vis the remarks/gradings given by them in the ACR/APAR. The Reporting Officers relating to the period 2001-2002, 2007-2008 and 2008-2009 have since retired on superannuation. Further, Reviewing Officers relating to the period 2001-2002, 2003-2004, 2004-2005, 2005-2006 and 2006-2007 have also retired on superannuation. The comments of Shri Murari Ratnam in his capacity as Reporting Officer/Reviewing Officer have been obtained and considered.

3. WHEREAS on going through all the representations of the officer reported upon i.e. Shri Aabi Binju it is observed that he has raised the following contentions uniformly:-

- (i) that he had not received any warning/memo before his ACR was down-graded; and
- (ii) that the reviewing officer was from a different area/field of specialization.

4. WHEREAS his contention that Shri Aabi Binju, Scientist C, CSMRS had not received any warning/memo before his ACR was downgraded has no substance as no such instructions were prevalent during that period. His contention that 'the reviewing officer was from a different area/field of specialization' is also not tenable since the reviewing officer was fully competent to comment upon the type of work that he was doing and it did not necessarily require someone belonging to the same discipline. Above all, Shri Aabi Binju, Scientist C has not given any concrete evidence to substantiate his claim for upgradation of his ACR. For example, in matters relating to the number of software problems solved or AMCs handled, he has not maintained any record.

5. WHEREAS after careful consideration of the matter, I do not find any merit in the representations and none of the seven representations has provided any relevant material to substantiate his plea for upgradation, all the seven representations of Shri Aabi Binju, Scientist C, CSMRS in respect of ACRs/APARs for the period from 1.4.2001-31.3.2002 (one ACR) and 1.4.2003-31.3.2004; 1.4.2004-31.3.2005; 1.4.2005-31.3.2006; 1.4.2006-31.3.2007; 1.4.2007-31.3.2008; 1.4.2008-31.3.2009 (six ACRs) are hereby rejected.

Sd/-
(G.Mohan Kumar)
Additional Secretary (Water Resources)"

From a perusal of the same it becomes clear that the Competent Authority examined his representation in accordance with the prescribed procedure and expressed his views. The Tribunal does not function as an appellate authority in matters of this nature.

17. In **M.V. Thimmaiah Vs. UPSC**, (2008) 2 SCC 119, the Hon'ble Supreme Court held as under:

“..... courts normally do not sit in the court of appeal, to assess the ARCs and much less the Tribunal can be given this power to constitute an independent Selection Committee over the statutory Selection Committee. The guidelines have already been given by the Commission as to how the ACRs to be assessed and how the marking has to be made. These guidelines take care of the proper scrutiny and not only by the Selection Committee but also the views of the State Government are obtained and ultimately the Commission after scrutiny prepares the final list which is sent to the Central Government for appointment. There also it is not binding on the Central Government to appoint all the persons as recommended and the Central Government can withhold the appointment of some persons so mentioned in the select list for reasons recorded. Therefore, if the assessment of ACRs in respect of Shri S. Daya Shankar and Shri R. Ramapriya should have been made as “outstanding” or “very good” it is within the domain of the Selection Committee and we cannot sit as a court of appeal to assess whether Shri R.Ramapriya has been rightly assessed or Shri Daya Shankar has been wrongly assessed. The overall assessment of ACRs of both the officers were taken; one was found to be “outstanding” and the second one was found to be “very good”. **This assessment cannot be made subject of court's or Tribunal's scrutiny unless actuated by mala fide.”**

(Emphasis Supplied)

This was followed by the Hon'ble Delhi High Court in its judgment dated 6.01.2015 in W.P. (C) 43/2014.

18. If that is the prerogative conceded to the Selection Committee, the liberty of the Reporting and Reviewing Authorities to assess the performance of the concerned officer can easily be imagined. The system provides for inbuilt checks and balances. The applicant did not even plead malafides against any of the officers. The very purpose of maintaining ACRs, that too by providing for three tier authorities i.e. Reporting, Reviewing and Accepting Authorities is to ensure that an objective and transparent assessment of the performance of an employee is made.

19. It may be true that the evaluation of the ACRs of the applicant was "Very Good" upto the year 2001-02. The occasion to interfere with the gradation in the ACR would arise if only any malafides are attributed against the Reporting and Reviewing Authorities or if it is demonstrated that the finding recorded in the ACR, with reference to any factual aspect is incorrect. None of these aspects are either pleaded or proved in this OA.

20. We also reject the plea that the assessment as "average" could not have been made unless any admonition or warning was given. A perusal of the relevant memos discloses that when even any warning or admonition is administered, it

must be reflected in the ACRs. It is different from saying that assessment as 'average' cannot be made, in the absence of warning or admonition. If an officer is rated as 'outstanding' in a year, it is not necessary that same rating must be continued throughout. That would negate the very concept of annual evaluation.

21. Another contention advanced by the applicant is that the adverse entries were not communicated. Reliance is placed upon OM dated 8.02.2002. It reads as under:

"2.2 In the case of promotions from lower Groups to Group 'A', while the mode of promotion happens to be %selection by merit', the bench-mark prescribed is 'good' and only those officers who obtain the said bench-mark are promoted in the order of merit as per grading obtained. Thus, officers getting a superior grading supersede those getting lower grading. In other words, an officer graded as 'outstanding' supersedes those graded as 'very good' and an officer graded as 'very good' supersedes officers graded as 'good'. Officers obtaining the same grading are arranged in the select panel in the order of their seniority in the lower grade. Those who get a grading lower than the prescribed bench-mark ('good') are not empanelled for promotion.

2.3 In promotions to the level in the pay-scale of Rs.12,000-16,500/- and above, while the mode of promotion is 'selection by merit', the bench-mark prescribed is 'very good' and only those officers who obtain the said benchmark are promoted in the order of merit as per the grading obtained, officers getting superior grading supersede those getting lower grading as explained in paragraph 2.2 above. Officers obtaining the same grading are arranged in the select panel in the order of their seniority in the lower grade. Those who get a grading lower than the prescribed bench-mark ('very good') are not empanelled for promotion."

From this, it becomes evident that the necessity to communicate the entries in ACRs would arise if only they are adverse to an employee. Nothing adverse was observed in the relevant ACRs. At the most it is below benchmark in the context of promotion. Necessity to communicate such

remarks arose in the light of the judgment of the Hon'ble Supreme Court in **Dev Dutt Vs. Union of India**, (2008) 8 SCC 725.

22. At any rate, the subject matter of the OAs is not denial of promotion on the ground that the ACR is below benchmark. The prayer is to upgrade the ACRs. The application was filed in the year 2009. At that length of time, he cannot pray for expunction of adverse remarks.

23. Further plea raised by the applicant is that though the competent authority is under obligation as per OM dated 14.05.2009 to dispose of the representation made for upgradation of the ACRs within a period of three months, his representation was kept pending for quite a long time. This plea would have held water in case the complaint of the applicant was that his representation was not being attended to. He approached the Tribunal nearly three years after the representation was disposed of. The plea which can be raised before the disposal of the representation, does not hold any weight when it is raised three years after the disposal thereof.

24. It is true that in OM dated 20.05.1972, the competent authority is placed under obligation to pass a reasoned order and to deal with various contentions urged by an employee in the context of upgradation of the ACRs. It is also true that the order passed by the competent authority in the instant case is

brief in its purport. The fact, however, remains that the applicant raised the issue long after the ACRs were made. The competent authority suffers from two impediments. The first is about the non-availability of the officers for their comments on account of their retirement and the second is the failure on the part of the applicant to place any material with reference to the relevant issues.

25. We verified from the learned counsel for the applicant whether he has any other point to argue and we proceeded to dictate the order only when he said that he has no other point to argue.

26. We do not find any merit in the OAs and accordingly dismiss the same. The MAs shall also stand disposed of.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/dkm/