

**Central Administrative Tribunal
Principal Bench**

**OA No.4478/2014
MA No.3936/2014**

New Delhi, this the 29th day of August, 2019

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

Dr. B.C. Korwa, Age 59 years
S/o Late Sh. R.C. Korwa
R/o Flat No.505, Type-V, Block-2
Motia Khan, New Delhi-110055.

...Applicant

(By Advocate: Shri Sachin Chauhan)

Vs.

1. Union of India through the Secretary
Ministry of Health & Family Welfare
Nirman Bhawan, New Delhi.
2. The Director, Govt. of India
Ministry of Personnel, Public Grievances
And Pension, Department of Personnel
And Training
North Block, New Delhi.
3. The Under Secretary
Govt. of India
Ministry of Health and Family Welfare
(CHS-V Section), Nirman Bhawan
New Delhi.
4. UPSC, through its Chairman
Shahjahan Road, Dholpur House
New Delhi-110001.
5. The Chief District Medical Officer
Central and New Delhi
Directorate of Health Services
Govt. of NCT of Delhi
Pahar Ganj, New Delhi-110055.

6. The Director Health Services
Govt. of NCT of Delhi
F-17, Karkardooma, Delhi-32. ...Respondents

(By Advocates: Shri R.K. Jain and Shri R.V. Sinha)

ORDER (ORAL)

Justice L. Narasimha Reddy:-

The applicant was appointed as General Duty Medical Officer in the Central Health Services (CHS) on 16.12.1988. Over the period, he earned promotions as Senior Medical Officer, Chief Medical Officer and Chief Medical Officer (NFSG) by 05.04.2002.

2. The Government came forward with a scheme for extension of Dynamic Assured Career Progression (DACP) up to Senior Administrative Grade (SAG) in the Ministry of Health and Family Welfare through OM dated 29.10.2008. According to this, a CMO (NFSG) shall be eligible to be promoted to SAG grade with grade pay of Rs. 10,000 in PB 4, if he has put in seven years of service at the level of Grade Pay of Rs. 8700 in PB-4 or 20 years of regular service. The applicant contends that he completed 20 years of service by 2008 but was not considered for promotion at all. It is stated that his three ACRs which were below bench mark for the relevant period were communicated to him on 20.04.2011

and on the basis of representation made by him, the ACRs of the year 2005-2006 were upgraded to the level of Very Good.

3. The DPC met on 03.05.2013 and considered the case of the applicant also. The bench mark adopted by the DPC was, 'Very Good' APARs consistently for all the five years, preceding the relevant year. The ACRs for the years 2002-2003 to 2006-2007 became relevant for this purpose. It was found that though the applicant had APARs at the level of Very Good for four years, the one for 2006-2007 was assessed as Good and accordingly he was denied promotion.

4. The applicant submits that the representation made by him with reference to the ACRs of the year 2006-2007 was not considered in accordance with law, by the competent authority and that the order dated 11.09.2012 passed in this behalf, cannot be sustained in law. It is in this background, that the present OA is filed with different limbs of prayer such as; challenge to the order dated 11.09.2012, the declaration to the effect that denial of promotion to him to SAG is not proper and that he is entitled to be promoted to SAG with effect from the date on which he completed 20 years of service. Other ancillary benefits are also claimed. It is necessary to mention that the applicant retired from service in the year 2015.

5. The respondents contend that the representation made by the applicant, for upgradation of the ACRs for the year 2006-2007 was considered by summoning the record and on finding that no serious irregularity has taken place in the same and the applicant was not able to point out any defect, the order dated 29.04.2011 was issued. It is also stated that the DPC considered the case of the applicant and on finding that his ACRs are not up to the required level, did not recommend his case for promotion.

6. We heard Shri Sachin Chauhan, learned counsel for the applicant and Shri R.K. Jain and Shri R.V. Sinha, learned counsel for the respondents.

7. There is no denial of the fact that the applicant became eligible to be considered for promotion to SAG since he completed 20 years of service by 2008. The promotion is on the basis of evaluation made by the DPC. The ACRs become relevant in this behalf. The three ACRs of the applicant for the period in question, were found to be below bench mark i.e. 'Good' as against 'Very Good'. Therefore, they were communicated to him on 20.04.2011, and he made a representation in this behalf. The ACRs of 2005-2006 were upgraded to the level of 'Very Good'. However, the ACRs for the year 2006-2007 was not upgraded and the request, in

this behalf, was rejected through order dated 11.09.2012.

The relevant order reads as under:-

"The undersigned is directed to say that the representation of Dr. B.C. Korwa, CMO(NFSG) for upgradation of grading in his below benchmark ACR for the period 2006-07 was considered by the Competent Authority. The Competent Authority assessed the ACR objectively and found that Reporting Officer has been objective in assessing the ACR for the period 2006-07 and there is no reason to alter the assessment made by him. Therefore, the competent authority has recommended to retain the grading "Good" in the ACR for the period 2006-07.

2. Necessary entries have been made in the original ACR of the concerned year. The issues with the approval of Competent Authority."

8. The applicant contends that the competent authority was required to assign reasons, mentioning as to how his request cannot be considered. In this regard, we point out that the very representation of the applicant was somewhat defective. He reeled under the impression that "adverse entries" were made for that concerned year. That is not factually correct. The assessment of an officer as 'Good' is by no means adverse. It is incidental that the same is below 'bench mark' in the context of the norms adopted by the DPC for promotion. Left to itself, the assessment does not connote anything adverse to the employee.

9. The scope of judicial review, with the assessment in APAR is highly restricted. Equally, the scrutiny of the order passed by the competent authority has its own limitation. What the Tribunal would verify is, as to whether the various aspects urged by the applicant are addressed at all and whether the prescribed procedure was followed. If a perusal of the order passed by the competent authority discloses that the record was perused and the matter was examined, it does not go further to verify as to what was the nature of evaluation undertaken by the competent authority.

10. The applicant did not allege anything against the reporting and reviewing authorities who dealt with the concerned ACRs. The Tribunal cannot peep into the minds of those officers and nor it can sit as an appellate authority. Therefore, we do not accept the plea of the applicant in his challenge to the order dated 11.09.2012.

11. Once the APAR of the applicant for the year 2006-2007 was below bench mark, there was no way that he could have been promoted to SAG. The various reliefs claimed in the OA depend upon his fulfilling the selection criteria. The requirement at the relevant point of time was that all the ACRs of the five years must be at the level of 'Very Good'. The applicant has only four of them. Hence, it cannot be said

that any illegality has taken place in denial of promotion to the applicant to the SAG.

12. We do not find any merit in the OA. It is accordingly dismissed. There shall be no order as to costs.

(Mohd. Jamshed)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

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