

**Central Administrative Tribunal
Madras Bench**

OA/310/01211/2015

Dated the 14th day of August Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

Dr. P.R.Sudhakar,
S/o R.J.Packiaraj,
A-202, Shrishti, 14 First Cross Street,
Sriram Nagar, Thiruvannamiyur,
Chennai 600041.

.. Applicants

By Advocate **M/s.Giridhar & Sai**

Vs.

1. Union of India,
rep by Secretary to Government,
M/o Defence Production,
R.No.136, South Block,
New Delhi 110 011.
2. Ordnance Factory Board,
rep. by its Director General,
10-A, SK Bose Road,
Kolkatta 700001.
3. Union Public Service Commission,
rep. by its Chairman,
Dholpur House, Shahjahan Road,
New Delhi 110069.
4. The Secretary (Personnel),
DOP&T, R.No.12, North Block,
New Delhi 110011.

.. Respondents

By Advocate **Mr.S.Padmanaban (R1,2&4), Mr.M.Venkateswaran (R3)**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

This is an OA filed seeking the following relief:-

“to declare that the proceedings of the Review DPC dated 3.12.2014 are vitiated by non-application of mind, illegal and invalid;

to direct the respondents to promote the applicant to HAG plus with effect from 30.8.2013, with all consequential benefits, including arrears of pay and allowances in the said Grade and refixation of pension, terminal and other benefits and payment of arrears thereof;

to award costs, and pass such further and other orders as may be deemed and proper and thus render justice.”

2. The case of the applicant is that he was working as Senior Deputy Director General in the Higher Administrative Grade (HAG) under the respondents and the next avenue of promotion available to the applicant was to the post of HAG Plus for which vacancy arose in the year 2013-14. Though the applicant has a meritorious service, the Departmental Promotion Committee (DPC) held on 29.1.2013 found him “unfit” on the basis of a grading in ACR for a short period in the year 2008-09 as 'Good' only. According to the applicant, he was granted promotion to the post of HAG eventhough the said ACR as 'Good' was there. Accordingly, he filed OA challenging the action of the respondents in OA 433/2014 for a direction to conduct a review DPC and promote him to the post of HAG Plus. This Bench has allowed the above OA 433/14 as per order dated 30.4.2014. However, the respondents filed a

WP14515/2014 and the Hon'ble High Court has clarified that there is no direction to promote the applicant as such and the Hon'ble High Court clarified the order as to consider the applicant for promotion in accordance with law, if found fit, and notionally promote him. But the DPC which met on 03.12.2014 made the same recommendation without any change. So, he has filed the present OA to declare the proceedings of the review DPC dated 03.12.2014 as vitiated by non-application of mind and it is illegal and invalid.

3. The respondents entered appearance and filed a detailed counter denying the allegations in the OA. They admitted that the applicant's name came up for promotion as Senior General Manager (SGM) in Ordnance Factory Board for the year 2011-12 and there existed 9 vacancies. The applicant was considered at Sl.No.5 and the DPC has assessed him to be "fit" for promotion to the post of SGM. Accordingly, he was given promotion. Thereafter, the DPC for promotion to the grade of Additional Director General (ADG) for the year 2013-14 was held on 29.1.2013 and the applicant was at Sl.No.1 in the said consideration, he was assessed as "unfit" for promotion by the DPC. Thereafter, the applicant has filed OA 433/2014 before the Tribunal and it was allowed by the Tribunal. Then the respondents had filed WP 14515/2014 before the Hon'ble High Court against the order of the Tribunal. The Hon'ble High Court of Madras by order dated 17.6.2014 has directed as follows:-

"Since there is no serious dispute regarding

modification of the order required by the official respondents, the direction given in para 18 is clarified to the effect that the said direction cannot be treated as positive direction and it is only to consider for promotion in accordance with law, if the respondents is found eligible and since the respondent is due to retire on 30.6.14, notional promotion with all other attendant benefits may be extended to the first respondent from the date of promotion.....”

On the basis of the said direction a Review DPC was again called on 03.12.2014 against the vacancies for the year 2013-14 in compliance with the order dated 30.4.2014 of this Bench in OA 433/2014. The Review Committee, accordingly, reconsidered the applicant at Sl.No.1 and carefully perused the ACRs (two parts) namely for the period 01.4.2008 to 02.9.2008 and 08.9.2008 to 31.3.2009 and the DPC had come to the conclusion that he does not meet the prescribed bench mark for the promotion to HAG plus since the applicant failed to get 'Very Good' bench mark in the ACRs of 5 years for consideration matrix. So, the Review Committee again found the applicant “unfit” for promotion. So, according to the respondents, DPC has found the ACRs/APARs in respect of the applicant for the years 2008-09 and 2010-11 below bench mark and he was found “unfit” for promotion. It was also mentioned that eventhough the applicant claims that a representation dated 08.12.2011 against the adverse entries in the APAR for the period 01.4.2010 to 31.3.2011 was submitted, it could not be traced out as it was not properly forwarded. The 2nd respondent has come to know about this representation only in the year 2014. The averments made in the application are baseless and without merit. According to the respondents, one Mr.A.K.Aggarwal, the then DGOF and Chairman, OF Board, recommended to

expunge the adverse remarks made in the ACR of the applicant for the period between 01.4.2008 and 02.9.2008 under whom the applicant has worked for a full year in the year 2010. According to them, the ACR for the year 2010 is not under dispute. The authority to expunge the adverse entries lies with the Raksha Mantri and hence the applicant's claim that A.K.Aggarwal had recommended for expunction of the adverse entries is having no relevance.

4. The DPC is vested with full discretion to devise its own methods and procedure for the objective assessment of the suitability of the officers to be recommended for promotion. As per DOPT OM No.22011/5/86-Estt(B) dated 10.4.1989, “the DPC cannot be guided merely by the overall grading, if any, that may be recorded in the CRs but should make its own assessment on the basis of entries in the CRs, because it has been noticed that sometimes, the overall grading in a CR may be inconsistent with the grading under various parameters of attributes”.

The DPC observed that the applicant was graded 'Very Good' by the reporting officer for the period 08.9.2008 to 31.3.2009. But the individual attributes were found to be not consistent with the overall gradings and the DPC, therefore, decided to grade him as 'Good' for the entire period 2008-09 in accordance with the guidelines issued by the DOPT dated 10.4.1989. The counsel for the applicant had invited our attention to the decisions of the Hon'ble Apex Court in ***S.T.Ramesh v. State of Karnataka [(2007) 9 SCC 436]***, ***Purushotham Dass Gupta v. Union of India reported in 80***

(1999) DLT 230, Badrinath v. Government of Tamilnadu & Others [(2000) 8 SCC 395], Dev Dutt v. U.O.I. reported in 2008 (8) SCC 725, Brij Nath Pandey v. State of U.P. & Others [(2001) 9 SCC 398], Rajesh Gupta v. J&K & Others [(2013) 3 SCC 514] for supporting his contentions as to how the APAR's has to be considered etc.

5. We have perused the pleadings and documents produced in this case. The copy of the DPC conducted in this case was produced by the respondents for perusal of the Tribunal. On a perusal of the records and gradings, it can be seen that the entire matter revolves around whether the DPC has taken into account the judgment in OA 433/2014, wherein, the Tribunal had made findings and decisions regarding how the gradings has to be done in this case. The counsel for the applicant would contend that the DPC which met on 03.12.2014 has not at all applied its mind to the decision rendered in OA 433/2014 and it again made the same decision which was found illegal by the Tribunal in its judgment dated 30.4.2014. The earlier decision of the DPC dated 29.1.2013 was challenged in the above OA and the various circumstances in which the applicant was found “unfit” was discussed in detail and the Tribunal had come to the following findings on the above issues in the said judgment:-

“16. The Reviewing Authority and the Accepting Authority have concurred with these assessment. When the assessment in the APAR given by the Reporting officer, Reviewing officer, Accepting Authority is 'Very Good' it is not clear to us as to the basis on which the DPC had arrived at a conclusion that the individual attributes are not consistent with the grading “Very Good”. If any other in puts had been made available to the DPC beyond the APAR for the relevant period, the applicant should have been given an opportunity to submit his response to those in puts. Thus we find the below bench mark grading awarded

for both years i.e. 2008-09 and 2010-11 cannot be held against the applicant. In the absence of clear and supporting evidence to show that all the relevant inputs had been given to the DPC enabling the DPC to come to such an assessment. The minutes of the DPC also indicate that the representation of the applicant dated 08.12.2011 against the adverse remarks has also been not placed before the DPC. The assessment of the DPC declaring the applicant as “unfit” for promotion to HAG Plus grade appears to be lacking proper reasons as the individual attributes recorded in both the APARs for the year 2008-09 do not justify any such downgrading on the part of the DPC. It is also noted that while the DPC for HAG Grade was attended by all the members, in the DPC for HAG Plus Grade, one of the crucial members viz. Secretary Defence Production was not present. The argument that the DPC for HAG Plus grade applied more stringent assessment of the leadership qualities etc. is also not supported by the material placed before us.

17. In the light of the above position, we are of the considered view that the denial of promotion to HAG Plus grade to the applicant is not justifiable and is violative of principles of natural justice. From the material made available to us and perusal of the APARs for the same period, the applicant comes out as an officer consistently maintaining good record of service and therefore it would be unfair to deny him the promotion to the top post in the cadre by relying upon the remarks which remained unsubstantiated and the representation submitted by the applicant against the adverse remarks is also still pending disposal. Further, with the approval of the ACC, it was decided to give the applicant the additional charge of Addl. DGOF/Member OFB in the HAG Plus grade. Denying the same to him on regular basis at the fag end of the career, particularly keeping in view the fact that the representation against the adverse remarks in the APAR for the year 2010-11 was still pending and also considering the fact that the DPC while independently assessing the officer as “Good” for the period 2008-2009, the DPC has not assigned any specific reasons supported by evidence for such down grading, in the light of the fact that the individual attributes of the applicant recorded in the two APARs pertaining the

year 2008-09 reveal that the officer was not found lacking in any of the attributes. The only comment which can be taken as adverse relates to the hesitation to assume additional responsibility and to work under stress and strain, which comment is further qualified by the assessing officer himself when he records that the said assessment is based on working for about only two months and for the rest of the period in that APAR, the applicant was on leave apparently for the purpose of his daughter's marriage. In the absence of any supporting reasoning recorded in the DPC minutes for promotion to the post of HAG Plus Grade and also considering the fact that one of the crucial members of the DPC namely the Secretary (DP) did not participate in that DPC meeting, whereas he was present in the earlier DPC held for promotion to the post of HAG grade, we are of the considered view that the downgrading given by the DPC for HAG Plus Grade from "Very Good" to "Good" is not in consonance with the facts on record and the same downgrading deserves to be ignored. The grading "Very Good" for the full year 2008-09, as assessed by the DPC for promotion to HAG has to be adopted for the purpose of assessing the suitability of the applicant for promotion to HAG Plus Grade also. In so far as the APAR 2010-11 is concerned, the representation dated 08.12.2011 submitted by the applicant against the adverse remarks is apparently still pending consideration and hence the APAR for the year 2010-11 ought not to have been considered by the DPC for promotion to HAG Plus Grade".

On going through the above, it can be seen that the Tribunal has considered all the facts taken by the respondents regarding the grading given for the year 2008-09 and 2010-11 and it was found that the above grading done by the DPC cannot be accepted. The Tribunal has also stated that the assessment of DPC declaring the applicant as "unfit" for promotion to HAG Plus appears to be lacking proper reasons as the individual attributes recorded in both APAR for the year 2008-09 do not justify any such downgrading on the part of the DPC. It was also held that the denial of

promotion to HAG Plus to the applicant in the circumstances is not justifiable and it is also violative of the principles of natural justice. It was also noted by the Tribunal that with the approval of the ACC, the applicant was given additional charge of Addl. DGOF/Member OFB in the HAG Plus grade. After the above posting, denying the benefit to him on a regular basis on the basis of an APAR made earlier at the fag end of the career is not proper. The applicant was on leave apparently for the purpose of his daughter's marriage and in the absence of any supporting reasoning recorded in the DPC Minutes, it is not proper to consider the same for downgrading the grade from 'Very Good' to 'Good' and the said downgrading deserved to be ignored. It is also stated that the grading 'Very Good' for the full year 2008-09 as assessed by the DPC for promotion to HAG has to be adopted for the purpose of assessing suitability of the applicant for promotion to HAG Plus grade also. The Tribunal has also not accepted the reason for not considering the representation given by the applicant regarding the APAR 2010-11 in this matter. So, according to the Tribunal, the APAR for the year 2010-11 ought not to have been considered by the DPC for promotion to HAG Plus grade. The above observations of the Tribunal clearly shows that the DPC has not properly appreciated the APAR and the Tribunal in the said OA has directed the respondents to conduct a Review DPC. The respondents filed a WP 14515/2014 before the Hon'ble Madras High Court against the order in OA 433/14 and when the matter came up for final hearing, the department has raised only one objection before the High Court. According to the respondents, the Tribunal has given a positive direction to promote the applicant and it is not proper. The Hon'ble High Court has,

therefore, modified the last para-18 of the OA as follows:-

“4. Since there is no serious dispute regarding modification of the order required by the official respondents, the direction given in para 18 is clarified to the effect that the said direction cannot be treated as positive direction and it is only to consider for promotion in accordance with law, if the respondent is found eligible and since the respondent is due to retire on 30.6.2014, notional promotion with all other attendant benefits may be extended to the first respondent from the date of promotion and the said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.”

From the above, it can be seen that the Hon'ble High Court has modified the order in such a way that there is no direction to promote the applicant to the HAG Plus Grade. The respondents were also asked to conduct a Review DPC in the light of the OA and pass orders in accordance with law. If we go through the above order of the Hon'ble High Court, it can be seen that the Hon'ble High Court has not set aside the findings of the Tribunal which is extracted supra. The only portion modified was a direction given by the Tribunal to promote the applicant to HAG Plus Grade. This is because it is for the DPC to conduct a review on the basis of decision in OA 433/14 and in accordance with law and procedure. Tribunals cannot take the role of DPC and direct promotions.

6. So, all the findings arrived in OA 433/2014 stands and the respondents are bound to follow the findings arrived by the Tribunal in OA 433/2014 while considering the Review DPC. The Review DPC in this case has not at all gone through the findings made by the Tribunal in OA 433/2014 and had miserably failed

to apply its mind and again came to the same conclusion on the same grounds which they had earlier made in the year 2013 without any change. This is arbitrary and a clear violation of the judgment of this Tribunal in OA 433/2014. So, the proceedings of the DPC is liable to be set aside. In view of our finding above, we are not going to the decisions cited by both sides in this case as the Tribunal has already decided the matter in OA 433/14.

7. In the above backdrop, the **proceedings of the Review DPC dated 03.12.2014 is set aside. The 1st respondent is directed to place the case of the applicant before the competent authority on his claim for notional promotion from the due date to HAG plus with all consequential benefits duly keeping in view the observations quoted in para 5 of this order read with the earlier order of this Tribunal in OA No.433/2014 as clarified by the Hon'ble High Court and pass appropriate orders within a period of three months from the date of receipt of a copy of this order.**

8. With the above direction, the OA is disposed off. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

14.08.2019

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