

**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH**

OA NO. 194 Of 2015

Dated this 30th day of March Two Thousand Sixteen

P R E S E N T

**THE HON'BLE JUSTICE SHRI A. ARUMUGHASWAMY, JUDICIAL MEMBER
AND
THE HON'BLE R. RAMANUJAM, ADMINISTRATIVE MEMBER**

B. Sugumaran, Scientist 'C', Electronic Test & Development Centre, ETDC Building, Dr. VSI Estate, Thiruvanniyur, Chennai 600041

.. Applicant

By Advocate: M/s A.R. Suresh

Vs.

1. Union of India, rep by the Director General, Standardisation, Testing & Quality Certification Directorate, Dept. of Electronics & Information Technology, Electronic Niketan, No.6, NGO Complex, New Delhi 110003
2. The Joint Director, Standardisation, Testing & Quality Certification Directorate, Dept. of Electronics & Information Technology, Electronic Niketan, No.6, NGO Complex, New Delhi 110003
3. The Deputy Secretary, Standardisation, Testing & Quality Certification Directorate, Dept. of Electronics & Information Technology, Electronic Niketan, No.6, NGO Complex, New Delhi 110003
4. The Director, Electronic Test & Development Centre, ETDC Bldg., Dr. VSI Estate, Thiruvanniyur, Chennai 600041

.. Respondents

By Advocate: Mr. S. Navaneetha Krishnan

O R A L O R D E R

(Pronounced by Hon'ble Mr. R. Ramamanujam, Administrative Member)

Heard both.

2. This OA has been filed seeking the following reliefs:

"to direct the respondents herein to promote/empanel the applicant to the post of Scientist 'D' along with other eligible candidates who have completed minimum residency of 4 years as on 01.01.2012 taking into account his eligibility as per the proceedings dated 02.05.2013 by permitting the applicant to participate in the 2nd level screening and pass such further or other orders as this Tribunal may deem fit and proper in the circumstances of the case."

3. The applicant was originally appointed as Scientist 'B' on 12.04.2001 in the 1st Respondent office, New Delhi. He was transferred to Chennai and was promoted as Scientist 'C' w.e.f. 22.08.2007 in the 4th Respondent office. The next avenue of promotion is to the post of Scientist 'D'. The minimum residency period for Scientist 'C' for upgradation/ promotion to Scientist D is 4 years, which period the applicant had completed by 22.08.2011. According to the applicant ACRs for two years from 1.01.2008 to 31.12.2009 were Excellent and for the year 2010 his performance was Very Good. For the year 2011 his APAR was graded Good, which was intimated to the applicant on 14.01.2013. It is submitted that due to hardships faced by him in the office the applicant made a representation dated 20.07.2011 and 25.10.2011 to the 4th Respondent for repositioning him. In response, the Head-IT assured that there is no discrimination on any basis and advised him not to press for repositioning.

4. The 3rd Respondent published on 02.05.2013 a list of officers (Scientists B, C, and D who were eligible for consideration based on the information / data provided by the labs/ centres as on 01.01.2012 in which the applicant's name finds place and in the remarks column it is specifically stated "found eligible subject to clarification, if any required." On 12.08.2013 the 2nd Respondent sought vigilance clearance in respect of the applicant, which the applicant presumes, was sent. Hence, according to the applicant he was eligible for upgradation / promotion to the post of Scientist D and was hoping to be called for the 2nd level screening.

5. The applicant learnt that his name was not included in the 2nd level screening because he did not get "Very Good" Bench mark for the relevant period. According to the applicant he ought to have got "Very good" instead of "Good" and his name should have been included in the 2nd level screening.

6. On notice, the respondents have filed their reply to contest the OA. It is submitted that the applicant was appointed in the Dept. of Electronics & Information Technology under MC&T (the then MIT) with effect from 12.04.2001.

Thereafter, he was transferred to ETDC, Chennai, under Standardisation, Testing, Quality & Certification on 19.01.2007. Thereafter, he was promoted as Scientist-C with effect from 22.08.2007. The Directorate of STQC initiated the process of Review promotion of Group A S&T officers (in the grades of Scientist B, C and D eligible as on 01.01.2012 under the Modified Flexible Complementing Scheme (MFCS). The criteria for considering promotions under MFCS is by Level-1 Screening (Internal) and Level-2 Screening (External). As per Level-1 Screening (Internal) all the Scientists eligible according to the provision of MFCS and who meet the Bench mark of "Good" for Scientist-C and "Very Good" for Scientist-D and above would be screened in. The minimum residency period for consideration is 4 years for Scientist-D.

7. It was submitted by the respondents that the applicant had been awarded a numerical score of 5 in the assessment for the period between 01.01.2011 and 31.12.2011 which was held to be "Good". The minimum Residency period of 4 years for the applicant was up to 31.12.2011. Since the applicant was below the Bench Mark grading for the year 2011, he was not considered for level-2 Screening (External). It is further submitted that the applicant was fully aware that his gradation was only 'Good' during the period 01.01.2011 to 31.12.2011. He did not make any representation for upgradation of the grading in the APAR. The 1st Respondent called for particulars from the 4th Respondent by letter dated 12.12.2014 and 26.12.2014 regarding the response from the applicant in APAR grading of 2011 below the Benchmark giving an opportunity to the applicant as per DOPT instructions (Annexure-1). In the absence of any representation from the applicant, the Respondents' decision in screening out the applicant was as per the prescribed procedure laid down in MFCS and there is no illegality in the same.

8. We have heard both the counsel and perused the pleadings and documents attached.

9. At the hearing, the learned counsel for the applicant submits that one of the APARs of the applicant was below the Benchmark. However, he was not given

adequate opportunity. It is also submitted that inspite of the below Benchmark 'good', during the period 01.01.2011 to 31.12.2011, his average for the four years of the residency period would be 'Very Good' as he had two outstandings, one very good and one good which carried numerical scores of 9,9,7 and 5 respectively averaging 7.5, which is equivalent to 'Very Good'. He could, therefore, not be excluded from the select list for the post of Scientist-D on this ground. In this regard, learned counsel for the applicant relies on Instruction 12 for filling up the APARs which is reproduced below:

"12. Numerical Grading in Part-3: Numerical grading are to be awarded by reporting and accepting authorities for the quality of work output, personal attributes and functional competence of the officer reported upon. These should be on a scale of 1-10, where 1 refers to the lowest grade and 10 to the highest. The following guidelines may be kept in mind while awarding numerical grading:

i. It is expected that any grading of 1 or 2 (against work output or attributes or overall grade) would be adequately justified in the picture by way of specific failures and similarly, any grade of 9 or 10 would be justified with respect to specific accomplishments. Grades of 1-2 or 9-10 are expected to be occurrences and hence the need to justify them. In awarding a numerical grade the reporting and accepting authorities should rate the officer against a larger population of his/her peers that may be currently working under them.

ii. APAR graded between 8 and 10 will be rated as 'outstanding' and will be given a score of 9 for the purpose of calculating average scores for empanelment/promotion.

iii. APAR's graded between 6 and short of 8 will be rated as 'Very Good' and will be given a score of 7.

iv. APAR's graded between 4 and 6 short of 6 will be rated as 'good' and given a score of 5.

v. APAR's graded below 4 will be given a score of zero.

10. The learned counsel for the respondents, however, insists that the criteria adopted for screening is that a candidate must have a grading of "Very Good" or above in each of the years during which the performance is taken into account. Since the applicant had fallen short of 'Very Good' in the year 2011, and had failed to represent for upgradation, he had only himself to blame for being screened out of level-2 stage.

11. We have carefully considered the matter. It is not in dispute that for promotion to the grade of Scientist-D from Scientist-C under the Modified Flexible

Complementing Scheme (MFCS), the minimum performance required is a 'Very Good'. The only issue to be decided is whether it has to be very good each year and the shortfall in one year from the minimum would entail forfeiture of claim of the candidate to be considered further by the appropriate External Committee etc. for Level-2 screening. Whereas the applicant has referred to the relevant instructions accompanying the APAR forms which clearly stipulate different numerical scores for various gradings and also the score be taken for the purpose of calculating the average for empanelment / promotion, the respondents are unable to refer to any such rule or instruction or a provision under the Flexible Complementing Scheme that the employee has to earn the Bench mark 'Very good' grading in each of the years under consideration. In this context, it must be noted that the very purpose of prescribing a specific numerical score for a range of numerical grades such as 8-10, 6-8, 4-6, and below 4 is to be able to calculate the average for each eligible candidate and then compare it with the Benchmark prescribed/adopted for the purpose of promotion. If it is expected that a candidate should have earned the benchmark grade 'Very Good' in each of the years there would be no purpose in assigning a numerical score. We are, therefore, of the view that unless there are specific instructions as part of the FCS/ MFCS that enable the authorities to eliminate a person falling short of the Benchmark 'Very Good' even in one year, non-consideration of the case of the individuals on this ground would not be valid.

12. From the details of the scheme annexed at annexure A-2, it is seen that Assessment Boards would be constituted in each Scientific Ministry with a majority of External members possessing expertise in the relevant field. The Assessment Board would have the characteristic of an independent peer group for the assessment of the scientific content of the work done by the officer. In view of this, it appears unnecessary to eliminate persons at Level-1 on the basis of a single below Benchmark performance unless so stipulated by the relevant rules or instructions. As no such rule / instruction is quoted, we presume there exists none.

13. In the light of the aforesaid conclusion, we are unable to uphold the decision of the respondents not to process the case of the applicant for further consideration by the Level-2 Assessment Board. We, therefore, direct the respondents to review their decision and permit the applicant to participate in the second level screening.

14. The OA is allowed in the above terms. No order as to costs.