

**Central Administrative Tribunal
Ernakulam Bench**

OA No.180/00871/2017

Friday, this the 5th day of July, 2019.

CORAM

Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member

Rajesh Kumar R,
Scientist-E, Centre for Development of Advanced Computing,
Vellayambalam, Thiruvananthapuram-695 033.
Residing at “Sreenilayam”, 35/380, YMJ Road
Janatha North, Palarivattom, Kochi-682 025.

Applicant

(Advocate: Mr. Vishnu S.Chempazhanthiyil)

versus

1. Union of India represented
by the Secretary to the Government of India
Ministry of Electronics and Information Technology
New Delhi-110 001.
2. Centre for Development of Advanced Computing (C-DAC),
represented by the Registrar, University of Pune Campus
Ganeshkhind, Pune-411 007.
3. The Executive Director
Centre for Development of Advanced Computing
Vellayambalam, Thiruvananthapuram-695 033.
4. Mr.Subodh P.S.,
Scientist-E, Centre for Development of Advanced Computing
Vellayambalam, Thiruvananthapuram-695 033.
5. Mr.Rajesh K.R.,
Scientist-E, Centre for Development of Advanced Computing,
Vellayambalam, Thiruvananthapuram-695 033.
6. Mr.John Thomas
Scientist-E, Centre for Development of Advanced Computing
Vellayambala, Thiruvananthapuram-695 033.

Respondents

Advocates:

Mr.N.Anilkumar, SCGSC for R1 to 3.

Mr.Jawahar Jose for R 4 to 6.

The OA having been heard on 1st July, 2019, this Tribunal delivered the following order on 5.7.2019:

ORDER

By E.K.Bharat Bhushan, Administrative Member

This OA is filed by Sri Rajesh Kumar, Scientist-E, Centre for Development of Advanced Computing (C-DAC), Thiruvananthapuram, against alleged discrimination in fixing his seniority in relation to his colleagues - respondents 4, 5 and 6. The applicant had applied for a post of Scientist-D in response to the notification issued by the respondent organization and an offer of appointment was issued to him, dated 5.3.2009. After selection and completing joining formalities, he joined the organization on 23.4.2009. There had been some delay in his joining on account of procedural issues which resulted in his delayed joining. Respondents 4, 5 and 6 are promotees who were promoted to the Grade of Scientist-D from within the organization. In view of the delay in joining despite the fact that the applicant was ranked No.1 in the selection process, they came to occupy a position above him in seniority. This was not so in the initial posting time. He is aggrieved by the set of circumstances which resulted in his coming to occupy a position lower in seniority than others.

2. Ever since joining the organization, the applicant has been doing excellent work as is seen from the various years ACR/APAR Grade that he obtained. The gradings obtained are as below:

<i>Year</i>	<i>ACR/APAR Grade</i>
2009	<i>Very Good</i>
2010	<i>Very Good</i>
2011	<i>Outstanding</i>
2012	<i>Very Good</i>
2013	<i>Outstanding</i>
2014	<i>Excellent</i>
2015	<i>Outstanding</i>
2016	<i>Outstanding</i>

3. The Annual Work Reports of the applicant for the relevant years 2009 to 2016 are also produced as Annexure A9(a), as also his ACR ratings for various years. However, it is seen that his ACR ratings for the years 2009 and 2010 which had been rated by the Reporting Officer as '*outstanding*' had come to be reduced by the Reviewing Officer as '*very good*'. The true copies of the ACRs for the two years are at Annexure A10 and A10(a). The applicant submits that the records were not accessible to him and hence he was not aware of the reduced ratings conveyed. It was only after obtaining his ACR ratings by filing an RTI 2016 that he came to know of his '*outstanding*' rating reduced to '*very good*'. He made a representation on 29.12.2016 to get remedy (Annexure A11). But this was to no avail.

4. Department of Electronics and Information Technology, Government of India brought out a Personnel Policy and Practice for Group-A Science and Technology officers wherein modalities for promoting Group-A officers working under the Ministry and its associate offices were detailed on the same lines as the Flexible Complementing Scheme issued by the DoPT for scientific departments. The policies with respect to Scientists up to 'E' Grade are narrated as follows:

“3. The policy shall cover all the existing Group A S&T Officers who are holding a Group-A S&T post. The grade structure for which this policy will be applicable shall be as under:

S.No.	Pay band and Grade pay	Designation	Minimum residency period (MRP)
1	PB-3, GP:Rs.5400/-	Scientist B	3 years
2	PB-3, GP:Rs.6600/-	Scientist C	4 years
3	PB-3, GP:Rs.7600/-	Scientist D	4 years
4	PB-4, GP:Rs.8700/-	Scientist E	5 years
5	PB-4, GP:Rs.8900/-	Scientist F	5 years
6	PB-4, GP:Rs.10,000/-	Scientist G	

4. All those S&T officials who have rendered the minimum residency period as indicated above, shall be eligible for consideration for promotion to the next higher grade. The crucial date for consideration shall be as on the 1st of January and 1st of July every year. The process for assessment should begin by October and April every year and end by mid-December and mid-June so that all promotions are given effect to as on 1st January and 1st July respectively every year. If, for some reasons, there are administrative delays in concluding the assessment process, the promotions shall, however, be given effect from as on 1st January/1st July of the eligible year.

5. The assessment and promotion process shall consist of:-

(ii) *Reporting Format:* An Annual Work report (AWR), designed by DoPT to capture scientific content of work performed, would be filled up (only part A) by all S&T officers along with the Annual Performance Appraisal Report (APAR) and would get reported upon by the Reporting Officer. The assessment of Screening Committee would be in part C of the AWR at the time of consideration under the policy.

(iii) *Interview:* The interview boards, members of which are to be nominated by the appointing Authority, shall be constituted for assessing the performance of the Scientists who have been screened in. The assessment board, apart from the chairman, who shall be an outsider, shall generally consist of a member each from the academics, industry and the government. . The interview board shall assess the scientific content of the work. The interview board shall document through a one page summary of the specific content of the work done justifying the merit for consideration for promotion.

(iv) *Marks in the APAR:* Marks awarded between 8 to 10 will be rated as 'outstanding', marks awarded between 6 and short of 8 will be rated as 'very good', marks awarded between 4 and short of 6 will be rated as 'good and below 4 as Zero.'

5. While implementing the same, there were complaints of wrongful application of the principles set out in the policy and these came to be addressed through an Office Memorandum dated 31st July, 2017 (Annexure A16). The reason adopted for the modification and the remedial steps enumerated are given as below:

“3. Overall, it was observed that the policy was not implemented in the right spirit and there were many gaps in understanding and interpretation of the various provisions. Considering this, a Committee comprising of the Executive Directors of CDAC Mumbai, Thiruvananthapuram and Pune Centres were set up to examine the matter in a holistic manner and submit the report to the DG, CDAC. The Committee, after a thorough examination of the matter and consultation with different stakeholders, has submitted its report.

4. Based on the observations as above, and the findings/recommendations of the Committee, the matter was referred to MeitY, suggesting the following corrective action:

(a) All promotions recommended and granted with prescribed MRP may be retained as such and given effect to.

(b) All cases in which the promotions were recommended and granted beyond MRP in a single sitting of the Interview Board may be reviewed afresh by a duly constituted Board. The Interview Board shall recommend the candidates either as fit or unfit in that particular assessment. The assessment will be done year-wise, in separate sittings of the Interview Board.

(c) If an officer is not found fit even in the third review, he/she be covered under the MACP Scheme as per the provisions of the same.

(d) All officers who have not been found fit by the previous Interview Boards may be interviewed afresh, year wise, and if not found fit even in the third assessment, be covered under MACP Scheme.

(e) While assessing the officers, the Board shall give due weightage to the APAR/AWR ratings.

(f) An officer reviewed for promotion in a certain year and not found fit will be reviewed again on completion of one year (by which the next APAR/AWR will be available).”

6. Finally when the Scheme was adopted in C-DAC, the effective date of the applicant was shown as 1.1.2015 whereas that of the 4th respondents was 1.1.2014, the 5th respondent 1.1.2014 and the 6th respondent 1.1.2015. It is to be recalled that as a part of the promotion process, apart from the APAR examination, a process of screening followed by interview was adopted. In the case of the 4th and 5th respondents, the applicant is aware that no interview was done. After the modificatory OM was issued, which is challenged in this OA, Annexure A19 came to be issued, by which the applicant came to occupy Sl.No.5 with date of promotion as 1st July, 2014 whereas respondent No.6 who was No.2 in the original selection process, was granted the date of 1st January, 2014. The applicant considers this as unfair and unjust. The reliefs sought in the OA are as follows:

- (i) Direct the 3rd respondent to upgrade the performance ratings of the applicant for his ACRs of the years 2009 and 2010 to 'Outstanding' as originally rated by the Reporting Officer.*
- (ii) Set aside Annexure A10 and A10(a) to the extent the applicant is assessed as 'Very Good' for the years 2009 and 2010.*
- (iii) Direct the respondents to consider granting promotion to the applicant as Scientist-E w.e.f. 1.1.2012 as provided for, in terms of the recommendation of the Reporting Officer in Annexure A10(a) ACR and under Annexure A21 MFCS Policy on accelerated promotion.*

Or in the alternative

- (iv) Direct the respondents to grant promotion to the applicant from 1.1.2013 taking into account the relaxation provided for in para 8 of Annexure A12.*
- (v) Set aside Annexure A15 to the extent the applicant is denied effective date of promotion as Scientist-E w.e.f. 1.1.2013.*
- (vi) Set aside Annexure A16 to the extent the same is in violation of the policy frame work in Annexure A12 and A13 and provided for a second and third round of interview.*
- (vii) Set aside Annexure A17 to the extent respondents 4 & 5 are granted date of effect of promotion as 1.7.2013.*
- (viii) Set aside Annexure A19 to the extent the applicant is granted effective date of promotion only from 1.7.2014 instead of 1.1.2013.*

7. A reply statement has been filed on behalf of respondents No.1 to 3. The facts relating to the applicant's service are admitted. While it is true that his ACRs for the years 2009 and 2010 came to be written down by the Reviewing Officer, this is a part of normal hierarchical exercise. The modificatory O.M., was necessitated on account of some misinterpretation of certain provisions, which was causing staff dissatisfaction, resulting in large number of representations. The candidates who were found fit in the interview process held on 17.2.2017 were recommended for promotion at MRP. The only shortcoming in the process was that the candidates at MRP +1 and MRP+2 and so on had been interviewed in a single sitting by the same Interview Board. This anomaly had been rectified by OM No.12/2017 of 31.7.2017. The promotion as well as the effective date of promotion were decided by the Interview Board which assessed the performance of the candidates and the APAR

ratings were only of a qualifying nature for '*screening in*' of the officers at level-1 which is followed by the next level of evaluation giving due weightage to scientific and technical content of his or her work. FCS has no direct applicability in promotion.

8. A Reply statement has been filed on behalf of respondents 4 & 5. The reliefs sought in the OA have been strongly disputed in the said reply statement. An altogether new line is taken at the outset itself in their reply statement to the effect that the applicant is a contract employee whereas respondents 4 & 5 are regular employees who had joined the respondent organization in 2001 as Scientist-B. So it would be wrong to treat the applicant and the respondents as one homogeneous group. This Tribunal had considered the question as to whether the applicant is a contractual employee or a regular employee in OA No. 1053/2013 and connected cases, the applicant being 6th respondent in the said case. By order dated 6.1.2016 (Annexure R4(g)), the Tribunal came to the conclusion that the applicant has no right to challenge Annexure A17 order whereby respondents 4 & 5 were granted promotion as Scientist-E as the applicant belongs to a different class of employees.

9. As per Exhibit A12 order, the Modified Flexible Complementing Scheme for career progression of Scientists in various scientific organizations had been introduced including in the second respondent's organization. As per the said Scheme, there is an initial screening based on ACR and those who qualify, proceed to the next level of screening. On the basis of the evaluation of the ACR, those who have obtained *very good and above* would move on for screening. Thereupon the eligible candidates are required to furnish their annual work report which is reviewed by a committee of senior members. This report is then forwarded to an interview panel who considers the ACR and AWR marks and after assessing the

applicant at the interview, examine the eligibility for grade promotion. In other words, ACR score alone is not a factor to help a candidate qualify for promotion, as appears to have been made out in the OA and it is merely of a qualifying nature.

10. The ACR ratings of the applicant and the respondents 4 & 5 are given as below:

<i>Year</i>	<i>ACR Rating</i>		
	<i>Applicant</i>	<i>Responent 4</i>	<i>Respondent 5</i>
<i>2009</i>	<i>Very Good</i>	<i>Outstanding</i>	<i>Outstanding</i>
<i>2010</i>	<i>Very Good</i>	<i>Outstanding</i>	<i>Outstanding</i>
<i>2011</i>	<i>Outstanding</i>	<i>Outstanding</i>	<i>Outstanding</i>
<i>2012</i>	<i>Very Good</i>	<i>Outstanding</i>	<i>Outstanding</i>
<i>2013</i>	<i>Outstanding</i>	<i>Outstanding</i>	<i>Outstanding</i>
<i>2014</i>	<i>Excellen</i>	<i>Outstanding</i>	<i>Outstanding</i>
<i>2015</i>	<i>Outstanding</i>	<i>Outstanding</i>	<i>Outstanding</i>
<i>2016</i>	<i>Outstanding</i>	<i>Outstanding</i>	<i>Outstanding</i>

11. The contention of the applicant that there were serious lapses on the part of the 2nd respondent in implementing promotion policy is also disputed. There was a need to bring out corrective orders as there had been a long delay in applying FCS to CDAC and this cannot be attributed as “undisclosed reasons”.

12. Heard Sri Vishnu S.Chempazhanthiyil, learned counsel on behalf of the applicant, Sri N.Anilkumar, learned SCGSC on behalf of respondents 1 to 3 and Sri Jawahar Jose on behalf of respondents 4 & 5.

13. The applicant’s entire grievance is regarding the fact that the private respondents 4, 5 & 6 have overtaken him in seniority due to the fact that he was initially assessed as MRP+1 whereas the respondents were assessed as MRP. He attributes this entirely to the fact that his ACR ratings for 2009 and 2010 had been brought down to ‘very good’ from ‘outstanding’. However, a perusal of the Scheme

would reveal that assessment of ACR/APAR is only one facet of the selection procedure. In fact it is merely of a qualifying nature and a Scientist who is graded as 'very good and above' as the applicant in this case is, would go on to be screened and interviewed. The applicant, after this process, came to be granted only MRP+1 which meant that his promotion would be due one year from 2013 i.e., from 2009 to 2013 would be his residency and thereupon he would be entitled to be considered in 2014. Promotions are to be given effect to from 1st January and 1st July respectively and in the case of the applicant, having joined the organization on 23.4.2009, he was not eligible for the date of 1st January, 2014 and qualified only for 1st July, 2014 whereas others including respondent No.6 had no such issues. In so far as the charge made in the OA that the applicant alone has been subjected to an interview process, it is seen that MRP candidates are not required to appear for interview unlike MRP+1 and MRP+2 candidates.

14. The applicant has not challenged the procedure or the conclusion arrived at by the interview/selection committee with reasons thereof. His only grievance is with regard to his ACR ratings for 2009 and 2010 which are already given. Besides, the contention of the respondents 4 & 5 that the applicant is a contractual employee and could not claim equal treatment with others is also a pertinent factor in the light of the decision of the Tribunal in Annexure A4.

15. Based on the above, we come to the conclusion that the OA lacks merit and we proceed to dismiss the same. OA stands disposed of.

16. During the pendency of the OA, the applicant has filed three Miscellaneous Applications as below: (i) MA No.1276/18 (filed on 21.11.2018) for a direction to the respondents to consider the applicant also, under the promotion drive initiated vide Annexure MA1; (ii) MA No.184/19 (filed on 12.2.2019) for a direction to the

respondents to consider the applicant also, under the promotion drive initiated vide Annexure MA1 or in the alternative to stay the operation of Annexure MA1, till the disposal of the OA; and (iii) MA No.226/19 (filed on 22.2.2019) praying for a direction to the respondents to consider the applicant also in the selection process due in the July 2018 and July 2019 cycles of promotion review for Group-A S&T employees, which is now scheduled to be held on 25th & 26th of February, 2019. In view of the dismissal of the OA, all the aforementioned Miscellaneous Applications stand closed.

(Ashish Kalia)
Judicial Member

(E.K.Bharat Bhushan)
Administrative Member

aa.

Annexures filed by the applicant:

- Annexure A1: Copy of the offer of appointment No.PGA/RCT/135/09 dated 5.3.2009 to the applicant from the 3rd respondent.
- Annexure A2: Copy of the list of candidates and interview rank list of the candidates selected for the post of Scientist-D for the direct recruitment held in 2009.
- Annexure A3: Copy of the Experience Certificate issued by RBEI to the applicant dated 30.3.2009.
- Annexure A4: Copy of the Relieving letter issued by RBEI, the previous employer of the applicant dated 30.3.2009.
- Annexure A5: Copy of the salary certificate issued by RBEI to the applicant dated 18.2.2009.
- Annexure A6: Copy of the letter No.PGA/RCT/135/09 dated 5.3.2009 issued by the 3rd respondent to DHS.
- Annexure A7: Copy of letter No.MH1-32385/2009/DHS from the Directorate of Health Services to the applicant.
- Annexure A8: Copy of Medical Fitness Certificate issued to the applicant on 23.4.2009 by the Directorate of Health Services.
- Annexure A9: Copy of one page write up of the applicant duly signed by the Reporting officer and 3rd respondent.
- Annexure A9(a): Copy of Annual Work Reports of the applicant for the relevant years from 2009 to 2016.
- Annexure A9(b): Copy of information sought under RTI Act for supply of Part B and C of the Annual Work Report of the applicant from 2009 to 2016.
- Annexure A10: Copy of Part A of Annual Work Reports (AWR) of the applicant for the period from 2009 till 2016.
- Annexure A10(a): Copy of Annual Confidential Reports (ACR) of the applicant for the years 2009 and 2010.
- Annexure A11: Copy of the representation dated 29.12.2016 submitted by the applicant to the 3rd respondent.
- Annexure A12: Copy of Office memorandum No.2 (11)/2016-Pers.III dated 19.9.2016 issued by the 1st respondent.
- Annexure A13: Copy of Office Memorandum 20/16 HRD/R/02 issued by the 2nd respondent dated 7.11.2016 being the promotion policy of CDAC.
- Annexure A14: Copy of the interview memo No.HR/101/2016 dated 8.2.2017 issued by the 3rd respondent.
- Annexure A15: Copy of Circular No.HR/101/2016 dated 14.3.2017 issued by the 3rd respondent.
- Annexure A16: Copy of Office memorandum No.CORP: DG:2723 dated 31.7.2017 issued by the 3rd respondent.
- Annexure A16(a): Copy of the Office Memorandum CORP:DG:2731 dated 8.8.2017 issued by the 3rd respondent.
- Annexure A17: Copy of Circular No.HR/101/2016 dated 17.8.2017 issued by the 3rd respondent.
- Annexure A18: Copy of email communication scheduling interview on 16.8.2017 for promotion to the post of Scientist-E.

- Annexure A19: Copy of Circular No.HR/101/2016 dated 22.8.2017 issued by the 3rd respondent.
- Annexure A20: Copy of Circular No.HR/101/2016 dated 25.8.2017 issued by the 3rd respondent.
- Annexure A21: Copy of Modified Flexible Complementing Scheme issued by the Government of India, Ministry of Personnel, Public Grievances and Pension.
- Annexure A21(a): Copy of communication No.PGA/PER/201A/2011 dated 26.4.2011 issued by the 3rd respondent.
- Annexure A21(b): Copy of office order No.PGA/PER/201A/2011(i) dated 9.5.2011 issued by the 3rd respondent.
- Annexure A22: Copy of communication No.6(1)/2013-STPI dated 14.10.2013 issued by the Sr.Admn. Officer, Software Technology Parks of India.
- Annexure A23: Copy of communication No.C-DAC: Corp-HRD/2014-3102 dated 3.1.2014 issued by the 3rd respondent.
- Annexure A24: Copy of letter No.MH1/11780/2008/HFWD dated 20.3.2016 issued by the Office of Director, Health Services.
- Annexure A24(a): English translation of Annexure A24.
- Annexure A25: Copy of Part C of AWR i.e., Screening Committee Report.
- Annexure A26: Copy of Final Assessment Form for interview/DPRC held on 17.2.2017.
- Annexure A27: Copy of Final Assessment Form for interview/DPRC for MRP+1 dated 17.8.2017.
- Annexure A28: Copy of MeitY Order No.6(20)/2017-ABCD dated 28.7.2017 obtained through RTI Act.
- Annexure A29: Copy of the order dated 14.12.2018 in OA No.661/2017 and OA No.679/2017 of this Tribunal.
- Annexure A30: Copy of Experience Certificate issued to the applicant by the CDAC.
- Annexure A31: Copy of the Probation confirmation order No.PGA/PER/106/2010 dated 23.6.2010 of the applicant.
- Annexure A32: Copy of judgment dated 28.3.2016 in OP (CAT) No.113/2016 of the Hon'ble High Court of Kerala.
- Annexure A33: Copy of Office Memorandum F.no.CS-14017/6/2017-Estt(RR) dated 3.1.2018 issued by the Govt of India, Ministry of Personnel, P.G. & Pensions.
- Annexure A34: Copy of judgment dated 23.5.2019 in OP (CAT) No.129/2019 of the Hon'ble High Court of Kerala.
- Annexure MA1
in MA 1276/2018: Copy of Office memorandum No.HRD/R/02 dated 10.8.2018 issued by the CDAC.
- Annexure MA1
in MA No.184/2019: Copy of Office memorandum No.HRD/R/02 dated 4.1.2019 issued by the CDAC.

Annexures filed by the respondents:

Annexure R1: Copy of Circular dated 17.10.2017.

Annexure R2: Copy of O.M., No.21/18 dated 10.8.2018.

Annexure R4(a) : Copy of the notification issued by the 2nd respondent.

Annexure R4(b): Copy of the appointment order dated 2.1.2001 of the 4th respondent.

Annexure R4(c): Copy of the appointment order dated 2.1.2001 of the 5th respondent.

Annexure R4(d): Copy of the confirmation order dated 9.3.2002 of the 4th respondent.

Annexure R4(e): Copy of the confirmation order dated 9.3.2002 of the 5th respondent.

Annexure R4(f): Copy of the relevant pages of the Bye-Laws of the 2nd respondent.

Annexure R4(g): Copy of the order dated 6.1.2016 in OA No.1053/2013 of this Tribunal.