

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

ORIGINAL APPLICATION NO.200/00116/2013

Jabalpur, this Wednesday, the 31st day of July, 2019

HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER

Dr. Subhash Chandra Mishra, S/o late Dr. Bipin Bihari Mishra, Aged about 59 years, R/o Bungalow No.18/1, Upper Line, GCF Estate, Jabalpur-482 011 (M.P.)
- APPLICANT

(By Advocate – Shri S.K.Nandy)

Versus

1. Union of India through its Secretary, Ministry of Defence (Defence Production), Government of India, South Block, New Delhi-110 001

2. The Chairman, Ordnance Factory Board, 10-A, Saheed Khudiram Bose Marg, Kolkata-700 001
- RESPONDENTS

(By Advocate – Smt.Kanak Gaharwar)

ORDER

By Navin Tandon, AM.-

The applicant is aggrieved that he has not been granted Non-Functional Upgradation (for brevity 'NFU') in the pay scale of Rs.67000-79000.

2. The applicant has made following submissions:-

2.1 He was working as Chief Medical Officer with the respondent-department, which is a post of Organized Group-A service.

2.2 There were certain adverse remarks in his confidential reports of the years 2007-08 and 2008-09. These adverse remarks were

communicated to him on 29.10.2010 and 01.11.2010 respectively (Annexure A-4 colly.).

2.3 Because of the above adverse remarks, his case for grant of NFU was deferred by the screening committee, which met on 15.09.2010. However, his juniors were given the benefit of NFU in the scale of Rs.67,000-79000 vide order dated 29.10.2010 with effect from 03.12.2009.

2.4 The competent authority expunged the adverse remarks of both the years, as communicated vide order dated 13.06.2011 (Annexure A-5).

2.5 The applicant had represented for convening a review DPC. However, his case was not considered on the ground that the Department of Personnel & Training (for brevity '**DoPT**') vide its Office Memorandum dated 02.04.2012 has stated that NFU will not be granted to those officers who are covered under the DACP Scheme. Whereas three more officers junior to him were given NFU vide orders dated 02.04.2012 (Annexure A-6).

2.6 He has prayed for the following reliefs:-

“**8(i)** Summon the entire relevant record from the respondents for its kind perusal.

(ii) Command the respondents to convene a review DPC to consider the case of the applicant for grant of NFU w.e.f. 03.12.2009 with all consequential benefits arising thereto as if the impugned order never passed;

(iii) set aside the order dated 9.11.2012 with respect to the applicant's case;

- (iv) Command the respondents to fix the pay of the applicant in the NFU Grade w.e.f. 31.12.2009 with all consequential benefits as such arrears of pay, pay fixation, interest on delayed payment etc.;
- (v) Any other order/orders, which this Hon'ble Court deems, fit proper.
- (vi) Cost of the petition may also kindly be awarded".

3. The respondents have submitted as under:-

3.1 The case of the applicant for grant of NFU was considered by a screening committee meeting held on 15.09.2010 wherein it was decided to keep his upgradation pending in view of certain adverse entries in his ACRs for the years 2007-08 and 2008-09(Annexure R-1). The committee also decided that consideration of the case will be deferred and DGOF will be asked to communicate the adverse remarks to the officer to give him an opportunity to make representation.

3.2 After expunction of adverse remarks, his case for upgradation was again submitted by the competent authority on 30.05.2011 (Annexure R-4) to the Ministry of Defence for convening the screening committee.

3.3 Before his case could be considered, the DoPT vide its Office Memorandum dated 02.04.2012 (Annexure R-5) clarified the issue that NFU will not be granted to those officers who are covered under the DACP Scheme. Accordingly, Ministry of Defence decided not to hold any further meeting of screening committee.

4. Heard the learned counsel of parties and perused the pleadings of the respective parties and the documents annexed therewith.

5. The Screening Committee in its meeting held on 15.09.2010 (Annexure R-1) has stated as under:-

“(5). The Committee noted that in case of Dr.S.C.Mishra, the adverse remarks for the year 2007-2008 had not been communicated to the Officer. Though the ACR for the year 2008-2009 had been communicated to the Officer, the adverse remarks had not been specifically intimated. The Committee decided that the consideration of the case will be deferred and that DGOF will be asked to communicate the adverse remarks to the Officer to give him an opportunity to make representation. In the case of Dr.B.Saha, it was noted that some adverse remarks pertaining to the year 2004-2005 (more than 3 years before current year) were recorded by the Reporting Officer. These were not communicated and the Reviewing Officer has upgraded the assessment – though not commenting on the Reporting Officer’s remarks. As per guidelines, the Committee decided to ignore the remarks. In case of Dr.V.K.Gaur, it was noted that there was an adverse comment in the ACR for the year 2005-2006 but this was not communicated. The overall grading was Very Good. It was decided to take the overall grading as Very Good. Accordingly Dr.B.Saha and Dr.V.K.Gaur were found fit for the Non-Functional Upgradation”.

(emphasis supplied by us)

5.1 From the above it is clear that the case of the applicant was deferred till such time that adverse entries are communicated and representation decided. While other two officers, namely, Dr.B.Saha and Dr.V.K.Gaur, junior to him, have been found fit for NFU. The applicant, in Para 4.4 of the Original Application, has submitted that his juniors were given the benefit of NFU in the scale of Rs.67,000-79000 vide order dated 29.10.2010 with effect from 03.12.2009.

5.2 After expunction of the adverse remarks, the case of the applicant should have been considered by the screening committee as per the rules prevalent as on the date of Screening Committee at par with his juniors who were considered on 15.09.2010. The respondents have declined consideration on the wrong pretext that in the meanwhile the circular of the DoPT dated 02.04.2012 has been issued. However, we find that the said DoPT's circular dated 02.04.2012 has since been declared as non-est vide DoPT's OM dated 25.04/03.05.2018.

5.3 In view of the above, the Original Application is allowed. The respondents are directed to consider the case of the applicant for NFU in the scale of Rs.67,000-79000 with effect from the same date when his juniors were granted. In case the applicant is found fit for NFU, all financial benefits from the date his juniors were granted, should be granted to the applicant. This exercise should be completed within a period of 90 (ninety) days from the date of receipt of a copy of this order. The applicant shall not be entitled for any interest. However, if the above order is not complied with within the stipulated period, the applicant shall be entitled for interest on the due amount at GPF rate beyond that date till the payment is made. No costs.

(Ramesh Singh Thakur)
Judicial Member
rkv

(Navin Tandon)
Administrative Member