

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.579/2003

This the 6th day of August, 2003

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Dr. K. Kamal,
A-2724 Netaji Nagar,
New Delhi-110023.

... Applicant

(By Shri G.K.Aggarwal, Advocate)

-versus-

1. Union of India through
Secretary, Deptt. of Scientific &
Industrial Research, Rafi Marg,
New Delhi-110001.
2. Chairman, Screening Committee for
ACRs of the Applicant for eligibility
to be interviewed for Sc'F' to Sc'G'
in July, 2002 through Secretary,
Deptt. S&IR, Rafi Marg,
New Delhi-110001.
3. Shri G.S.Basran
(now Under Secy. Ministry of Textiles)
through Secy., DSIR, Rafi Marg,
New Delhi-110001.
4. Shri Baidyanath Prasad,
Assistant, DSIR, Technology Bhawan,
Mehrauli Road, New Delhi-110016.
5. Shri S.Banerjee, Sc'F' and
Director of Administration, DSIR,
Technology Bhawan, Mehrauli Road,
New Delhi-110016. ... Respondents

(By Shri N.S.Mehta with Ms. Avinash Kaur, Advocate)

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, Member (A) :

Applicant has challenged Annexure A-1 dated 5.3.2003 whereby he was informed that the screening committee did not find him eligible for being interviewed for promotion to Scientist 'F' (Sc.'F') to Sc.'G' under the Modified Flexible Complementing Scheme (FCS) as on

h

1.1.2002. It has also been stated therein that his case had been considered by the screening committee in accordance with the directions of the Tribunal made in OA No.1695/2002. Applicant has sought quashing and setting aside of Annexure A-1 and direction for his promotion in situ under FCS from Sc.'F' to Sc.'G' on the basis of the recommendations made by the interview committee on 30.7.2002, arrears and other consequential benefits.

2. Applicant has been working as Director (Technology Utilization & Development) in the Department of Scientific & Industrial Research (DSIR) since 31.3.1997. In DSIR, an individual is to obtain 85% marks on the basis of five years' ACRs to become eligible for interview for promotion as Sc.'G'. He had earlier filed OA No.1109/2002 alleging that his ACR for 1997-98 was illegally changed resulting in omission of his name from the list of Sc.'F' screened-in for interview scheduled for 4.5.2002 for FCS in situ promotion from Sc.'F' to Sc.'G'. This OA was disposed of on 29.4.2002 directing DSIR to dispose of applicant's representation dated 19.4.2002 and to interview him on 4.5.2002 but result was to be subject to the decision on the representation. Interview scheduled for 4.5.2002 was postponed. Applicant's representation was rejected on 27.6.2002. He filed another OA No.1695/2002 alleging tampering of his ACR for 1997-98 resulting in his non-inclusion for interview. Applicant was provisionally interviewed on 30.7.2002 in terms of the Tribunal's interim orders dated 3.7.2002. The result of the interview was to be withheld and was subjected to the outcome of the OA. OA

✓

No.1695/2002 was partly allowed on 20.12.2002 directing that applicant's ACR for 1997-98 shall be ignored and eligibility for interview shall be on the basis of remaining four ACRs (1998-99 to 2001-02). The eligibility criterion of 85% aggregate marks from five ACRs was directed to be proportionately reduced. Annexure A-1 dated 5.3.2003 has been issued by respondents stating that Tribunal's directions in OA No.1695/2002 have been taken into consideration and applicant has not been found eligible for interview.

3. Respondents have produced records relating to meetings of the screening committee held on 1.4.2002 as well as on 23.2.2003. Respondents have also produced applicant's ACRs for five years from 1.4.1997 to 31.12.2001. All these records have also been shown to Shri G.K.Aggarwal, learned counsel of applicant.

4. The learned counsel of applicant has contended as follows :

- (1) In terms of the Tribunal's order dated 20.12.2002 in OA No.1695/2002, applicant's ACR for the year 1997-98 has to be ignored.
- (2) If ACRs for four years from 1998-99 to 2001-02 are taken into account applicant would become eligible for interview. The learned counsel stated that while applicant's ACR for the period 1998-99 has been graded as 'good' which entitles him to obtain 6 marks for the same, the same has been tampered.

The learned counsel stated that on the previous occasion he had seen for himself that applicant had been graded 'outstanding' for 1998-99 and as such, he would have been awarded 10 marks for the same making him eligible for interview. He stated that he has made this averment in paragraph 4.13 of the OA.

- (3) Composition of the committee is not in order as an external member from DRDO has not been included in the screening committee. ACRs for the years 1999-2000, 2000-01 and 2001-02 have been reviewed by the reviewing authority at the same time. Such a review destroys the essential character of the ACRs.
- (4) Applicant was recommended for regular promotion in the interview dated 30.7.2002 and that in their reply in OA No.1695/2002 respondents had not disputed that applicant would have been screened-in but for his ACR for the year 1997-98.
- (5) Criterion of 85% average fixed for eligibility for promotion is irrational and unworkable.

5. The learned counsel of respondents contended that false allegation has been made on behalf of applicant that any tampering has been done in the ACRs of applicant. Respondents have omitted ACR for 1997-98 from consideration in view of the directions of the Tribunal contained in order dated 20.12.2002 in OA No.1695/2002.

h

As applicant had been graded 'good' only for the year 1998-99, he was allocated 6 marks for the same and as such could not attain the benchmark. The learned counsel further stated that the screening committee did include an external member from DRDo and as such, composition of the screening committee was perfectly in order. Regarding the review of the ACRs for the years 1999-2000 to 2001-02 no relief has been granted to applicant in any challenge to the same. Therefore, the gradings in these ACRs will stand. The contention made on behalf of applicant that the criterion of 85% average fixed for eligibility for promotion was irrational and unworkable had been gone into by the Tribunal in its order dated 20.12.2002. After examining various aspects of this issue, the contention of applicant was rejected. We do not intend differing with the same.

6. The learned counsel further stated that respondents have denied applicant's statement that he had been recommended for regular promotion after his interview on 30.7.2002. He was provisionally interviewed on 30.7.2002 in terms of the Tribunal's interim orders dated 3.7.2002 in OA No.1695/2002. Its result was kept in the sealed cover as per the said interim order. Subsequently, as he was not found eligible for being interviewed by the screening committee constituted in pursuance of the implementation of the final order dated 20.12.2002 in OA No.1695/2002, no action was required to be taken on the result of the interview kept in the sealed cover. The procedure for screening of ACRs is laid down by the screening committee constituted for the

h

purpose. Whether applicant would have been screened-in or screened-out is based on evaluation of the ACRs by the screening committee only. Respondents could not have given an assurance whether applicant would have been screened-in but for his ACRs for 1997-98.

7. We have carefully considered the rival contentions as also the records produced. From the minutes of the screening committee held on 1.4.2002 which have been shown to the learned counsel of applicant also it is clear that applicant had been graded 'good' for the year 1998-99 and was awarded 6 marks for the same. The contention made on behalf of applicant that he had been graded 'outstanding' and awarded 10 marks is not borne out from the records. The bald allegation of tampering of this record as well as the ACR for 1998-99 cannot be countenanced except that it has been stated on behalf of applicant in paragraph 4.10 that "Either original ACRs were tampered with or no ACRs were placed before the Screening-Committee", and in paragraph 4.13 that "As on 03.10.02, his ACRs were 97-98 (08), 98-99 (10), 99-00 (8), 00-01 (08), 01-02 (08)". It has neither been established anywhere nor in any relief granted to this effect that his ACRs for 1998-99 were tampered with and should not be taken into consideration. No record has been produced to the effect that when the learned counsel of applicant was shown the ACRs on previous occasions, ACR for 1998-99 was graded as 'outstanding' (10). In this view of the matter, ACR for 1998-99 has to be taken as correct ACR in which applicant was graded 'good'. The contention made on behalf of applicant that the reviewing

ln

16

- 7 -

authority had recorded his remarks on ACRs for 1999-2000 to 2001-02 at the same time, i.e., on 14.2.2002 which changes the essential character of the ACRs would also not carry any weight as these ACRs have not been challenged or it has not been established that these remarks have been expunged by any competent authority on applicant's representation. These remarks as such would stick. We have also looked into the composition of the committee. Objection taken by the learned counsel of applicant that a DRDO member had not been kept on the screening committee has also been found to be wrong. The explanation rendered by respondents in regard to the recommendations made in the interview of 30.7.2002 and whether applicant would have been screened-in but for his ACR for 1997-98 is also accepted. The consideration by the screening committee of applicant's case on 23.2.2003 is in order and whether or not respondents stated that applicant would have been screened-in but for his ACR for 1997-98 is of no consequence as the evaluation has to be done of the ACRs by the screening committee only and, we have also held that recommendations of the screening committee held on 23.2.2003 are in order and in terms of the aforestated directions of this Court.

8. Having regard to the reasons stated above, this OA is found to be bereft of any merit. Dismissed accordingly. No costs.

S. Raju
(Shanker Raju)
Member (J)

V. K. Majotra
(V. K. Majotra)
Member (A)

/as/