

**CENTRAL ADMINISTRATIVE TRIBUNAL****BANGALORE BENCH: BANGALORE****ORIGINAL APPLICATION NO.170/00061/2018****DATED THIS THE 29<sup>th</sup> DAY OF OCTOBER, 2019****HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER****HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

Shri Valasalan N.  
S/o Late Kumaran  
Aged about 61 years  
Section Officer(Retired)  
R/a No.1493, Gurukrupa  
Nanjundaiah Layout  
Behind Canara Bank  
Begur, Bangalore 560 068.

.....Applicant

(By Advocate Shri B.S.Venkatesh Kumar)

Vs.

1. Union of India represented by  
Secretary to Government  
Ministry of Science  
and Technology  
Technology Bhavan  
New Mehrauli Road  
New Delhi-110 016.
2. The Director  
Indian Institute of  
Astrophysics  
II Block, Koramangala  
Bangalore-560 034.

....Respondents

(By Advocates M/s. Sundara Swamy &amp; Ramdas for R2 &amp; Sri N.Amaresh)

**ORDER****(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))**

This is a second round of litigation. Earlier the applicant has filed OA.No.780/2016 which was disposed of by this Tribunal on 24.8.2017 with a

direction to provide the copies of the ACRs/APARs from 2009-2010 to 2014-15 to the applicant and consider the representation of the applicant against the gradings(Annexure-A1). The applicant was working as Section Officer from October 2008 onwards in the 2<sup>nd</sup> respondent Institute in PB-2 with GP Rs.4600. He possessed the educational qualification viz., M.Com, Executive MBA, PG Diploma in Human Resources Management, Diploma in Labour Law, English Shorthand and Typewriting Higher Grade and short term course in computers. According to the 'Norms and Guidelines for Screening and Assessment'(Annexure-A2) approved by the Institute, the minimum qualification for being considered for promotion to posts carrying GP Rs.5400 is undergraduate degree. It was made clear that candidates without minimum qualification may not be considered for promotion to the next higher grade but if the performance in the interview is excellent then they may be considered for one extra increment with advice to obtain minimum qualification for future promotional considerations. The residency period for being considered for promotion to Sr.Section Officer is five years. As the applicant was working as Section Officer from October 2008, he was eligible for being considered from September 2013. The 2<sup>nd</sup> respondent institute called him for interview/assessment in April 2014. He was the only candidate called for interview from administrative cadre. However, he was not given the promotion. The applicant was again directed to appear before the Assessment Committee on 15.5.2015 as per the letter dtd.7.5.2015(Annexure-A3) wherein total seven candidates appeared. One Smt.Padmavathi with undergraduate qualification was also considered for promotion to the Sr.Section Officer and after assessment, she was promoted

w.e.f. 1.1.2015 but the applicant was not promoted even though he had much higher qualification than Smt.Padmavathi. The persons who were unsuccessful in the assessment submitted appeal and after considering the same, the respondent institute constituted an appellate committee but the applicant was not promoted even subsequent to the appellate committee proceedings. When the applicant sought for ACR copies together with copy of assessment report under RTI Act vide application dtd.28.7.2015(Annexure-A4), the respondent institute replied that the copies of ACRs cannot be provided but informed the gradings awarded for the years 2009-10 to 2014-15 vide reply dtd.21.8.2015(Annexure-A5). Aggrieved by the same, the applicant submitted representation dtd.21.4.2016(Annexure-A6) requesting to make available ACRs copies. He also submitted appeal dtd.25.4.2016(Annexure-A7). Since there was no reply from the respondents, the applicant filed the above said OA.780/2016. After disposal of the said OA, the applicant was provided with the ACRs for the years 2010, 2011, 2012, 2013, 2014 & 2015(Annexure-A8(1) to A8(6) respectively) wherein while the applicant has been graded 'good' for all the years by the reporting officers, the reviewing officer has graded him as 'good' for the years 2010, 2011 & 2012, 'fair' for 2013, 'satisfactory/fair' for 2014 and again graded as 'good' for the year 2015. Therefore, it can be seen that the reviewing officer is not consistent in granting grading to the applicant. When the applicant submitted representation dtd.19.10.2017 (Annexure-A9) and reminder dtd.10.11.2017 (Annexure-A10) against the gradings, the 2<sup>nd</sup> respondent has sent a cryptic reply dtd.8.12.2017(Annexure-A11) to the applicant stating that no modifications are currently warranted. Being aggrieved by the same, he filed

the present OA seeking the following relief:

- a. Call for records of the case from the respondents and on perusal;*
- b. Quash and set aside the impugned communication bearing No.HA.D.6777.2017 dtd.8.12.2017(Annexure-A11) passed by the second respondent holding the same to be a bald and cryptic order.*
- c. Issue a consequential direction to the respondents to consider the case of the applicant for promotion to the post of Senior Section Officer from the year 2014 when his case was unjustly rejected by ignoring the ACR/APARs for the years 2012 and 2013 when the reviewing officer accorded downward grading from 'good' to 'fair/satisfactory' and 'fair' and promote the applicant from the date the selection committee recommended the case of others and further direct the respondents to pay full pay and allowances of the promoted post till the date of his retirement and to disburse the terminal benefits and pension in accordance with the pay scales of the promoted post in the interests of justice.*
- d. Issue a consequential direction to the respondent to pay all the arrears of pay and allowances and retiral benefits including revised pension with interest thereon at the earliest.*
- e. Award costs of this OA for unnecessarily dragging the applicant for needless litigation that too more than once and grant such other relief/s as this Hon'ble Tribunal deems fit to grant to the applicant in the circumstances of the case in the interest of justice and equity.*

2. The applicant submits that even though he possesses the highest qualification among all the persons considered, his case was rejected for promotion because of ACR/APAR issues. The same reviewing officer who has graded the applicant in the ACRs was also one of the members of selection committee. Therefore, it is a case of bias by this reviewing officer which resulted in denial of promotion to the applicant. The applicant produces a copy of the DoP&T OM dtd.23.7.2009(Annexure-A12) in the matter of preparation and maintenance of APARs, as per which if the authority were to differ with the grading accorded to an employee such authority should record the details of difference of opinion with reasons for the same. But the

reviewing officer has merely given the reduced grading to the applicant without recording the reasons for the same. In support of his case, the applicant relies on the decision of the Hon'ble Supreme Court in the case of *Dev Dutt vs. Union of India & Others* decided on 12.5.2008(Annexure-A13) as per which 'when a person was graded 'good' from the earlier years' grading of 'very good', it was incumbent on the part of the authorities to follow the principles of natural justice in that the person should be informed of the downward grading and have his say before sustaining the said gradings as otherwise principles of natural justice would be offended. In his case, the respondents have never informed the downward grading to the applicant at the relevant point of time thereby his right for promotion has been defeated. Though the request of the applicant for supply of copies of APARs was rejected, at the direction of the Tribunal in OA.No.780/2016, the same were furnished. When the applicant submitted representation against the remarks in the APAR, the 2<sup>nd</sup> respondent has passed a non-speaking and cryptic order mechanically without application of mind and hence the impugned order cannot sustain in the eye of law. The applicant has retired from service on 30.11.2016 on attaining the age of superannuation. As he has unjustly been denied promotion as Sr.Section Officer in 2014 & 2015, it has not only affected his pay and allowances during his service but has also affected adversely his retiral benefits and his pension would be affected throughout his life. Therefore, it is just and necessary to direct the respondents to consider his case for promotion ignoring the downward grading for the two years and by taking other available ACRs.

3. On the contrary, the respondents in their reply statement have submitted

that the applicant is re-agitating the very same issue even though the representation submitted by him pursuant to the orders in OA.780/2016 has been considered and replied to and hence brought to its logical end. Accordingly, the OA is liable to be rejected in limine.

4. The respondents submit that the applicant joined the Indian Institute of Astrophysics(Institute) which is a Society, registered under the provisions of Societies Registration Act, 1860, on 22.3.1984 as a typist and was promoted as Section Officer in October 2008 in PB-2 with Grade Pay of Rs.4600. He became due for assessment along with other administrative staff members of the institute during October 2013 on completion of the residency period of 5 years in the post of Section Officer. The assessment committee carried out assessment for promotion of 17 members of staff recommended by the screening committee in its final report dtd.18.2.2014(Annexure-R1) and 4 cases recommended by an arbitration committee chaired by 2<sup>nd</sup> respondent. The candidates were evaluated based on their Work Reports(WR) received by the Personnel Section and their performance in the Personal Interviews(PI) held on 15.4.2014 and 16.4.2014. The candidates were awarded scores for the work carried out by them as reported in their WRs and their performance in respective interviews with regard to their professional knowledge, skills and abilities both in their present post and those expected at the next level. The remaining candidates were recommended status quo with regard to designation and Grade Pay. The Assessment Committee after considering the applicant for promotion along with others, recommended status quo as he did not obtain the requisite percentage to qualify for promotion(Annexure-R2). Following the communication of the Assessment

Committee, the applicant sent a letter dtd.30.5.2014 requesting the Institute to review his assessment(Annexure-R3). Subsequently, a Screening Committee was constituted by the 2<sup>nd</sup> respondent vide his letter dtd.31.10.2014(Annexure-R4) to screen the cases of 50 staff members in the specified grade pays. The Committee took into consideration the ACR ratings and remarks of the last 5 years and recommended the applicant for assessment vide letter dtd.20.2.2015(Annexure-R5). Thereafter, a committee was constituted and met on 26.3.2015(Annexure-R6) and recommended consideration of the length of the service rendered by the staff members, number of promotions received and the grade received in the ACRs. The Institute directed the applicant to appear before the Assessment Committee on 15.5.2015 for a personal interview vide office order dtd.7.5.2015 (Annexure-R7). Subsequently, the Screening Review Committee constituted by the Director met on 27.3.2015(Annexure-R8) and reviewed all the cases. It observed that the staff members have already served for an average 20-25 years and reached the present stage by virtue of the promotion from the lowest cadre. The Committee screened the staff members based on the completion of residency period for giving adequate weightage along with the grade of ACRs. Based on which, the applicant was given status quo. As per the norms and guidelines for assessment, a staff member who is not found fit to be promoted would normally be considered for re-assessment only after two years. However, considering the applicant's educational qualifications and date of superannuation, the 2<sup>nd</sup> respondent exercising his powers ordered a re-assessment in the next year. Accordingly, an Assessment Committee was constituted by the Director vide office memorandum dtd.6.5.2015(Annexure-

R9) and it carried out assessment of 34 staff members recommended by the review committee and after evaluating the candidates based on average ACR grading, WR received and the performance in the PI, it gave its recommendation in May 2015(Annexure-R10) wherein applicant secured a total of 55.8% and was accordingly granted one increment in the present pay w.e.f. 1.7.2015 by letter dtd.2.7.2015(Annexure-R11) and applicant accepted the same without any protest and demur. A few staff members who were not considered for promotion although they had secured more than the prescribed threshold marks for promotion as they did not possess the minimum required qualification as prescribed for promotion, have sent a representation dtd.15.7.2015(Annexure-R12) to the 2<sup>nd</sup> respondent to consider their cases for promotion. Accordingly, the 2<sup>nd</sup> respondent constituted an Appellate Committee vide office order dtd.2.9.2015(Annexure-R13) to consider the appeals submitted by the staff members. The Appellate Committee decided to use the evaluation of the Assessment Committee as the criterion for the promotion of the persons and it accepted the recommendations of the Assessment Committee in the category of Satisfactory and Good performance. Those who did not have qualification at par with direct recruitment to the higher level, but had experience as judged from their performance, and had the above minimum qualifications were recommended promotion to the next level w.e.f. 1.1.2016 by the Appellate Committee(Annexure-R14). The recommendations of the Appellate Committee were submitted to the Director for approval and the Director approved the recommendations with an additional change i.e. cut off marks for reconsideration may be reduced from 62 to 60. Accordingly, 16 candidates

who fulfilled the criteria were promoted vide order dtd.22.9.2015(Annexure-R15). Even after reduction of the threshold marks, applicant did not qualify for promotion as he had secured only 55.8% marks. When the applicant requested for supply of copies of ACRs, he was permitted to inspect his ACRs on 23.9.2015 in the Conference Room vide email dtd.23.9.2015(Annexure-R16). When the applicant once again made an application dtd.21.4.2016(Annexure-R17) under RTI requesting copies of his APARs and another representation dtd.25.4.2016(Annexure-A7) levelling baseless allegations of bias and personal grudge against the reviewing officer, the Institute vide office memorandum dtd.2.5.2016(Annexure-R18), replied that the institute is yet to introduce the APAR for its staff members and therefore, the question of providing copies of APAR does not arise. Aggrieved by the same, the applicant filed an OA.No.780/2016 wherein the respondents have filed objections vide Annexure-R19 & R20. As per the direction of the Tribunal vide order dtd.24.8.2017 in the above said OA, the Institute has duly furnished copies of applicant's ACRs vide letter dtd.4.10.2017(Annexure-R21). When the applicant levelled baseless allegations against the officers of the Institute vide his representation dtd.19.10.2017(Annexure-A9), the 2<sup>nd</sup> respondent scheduled a personal hearing for the applicant vide letter dtd.14.11.2017(Annexure-A22). After taking into account the entire material pertaining to the applicant's performance, his representation and the law laid down by the Hon'ble Apex Court in the case of *Dev Dutt Vs. UOI* reported in *AIR 2008 SC 2513* came to the unanimous conclusion that there is no scope to change the earlier gradations. Accordingly, it was found that the applicant does not meet the minimum criteria laid down for promotion to Sr.Section

Officer and accordingly the decision of the 2<sup>nd</sup> respondent was communicated to the applicant vide letter dtd.8.12.2017(Annexure-A11). Thus it can be seen that the Institute has fully complied with the order dtd.24.8.2017 passed by this Tribunal. Merely because the applicant is aggrieved at not being promoted, it is not open to him to challenge the long standing procedure adopted by the Institute and no legal right to promotion is vested in applicant by the rules of the Institution or by law well settled by the Apex Court in this regard.

5. The respondents further submit that the averments of the applicant that the Reviewing Officer was not consistent in granting gradings to the applicant are false and misconceived. According to the bye-laws of the Institute, the Reviewing Officer being the Administrative Officer is a member of the Governing Council and the Assessment Committee. It is the Reviewing Officer's prerogative to upgrade or downgrade the ACR awarded to candidates by the Reporting Officer and it is not for the applicant to question the decision of the Reviewing Officer. The applicant is levelling baseless allegations of bias and personal grudge against the Reviewing Officer. The averment that the 2<sup>nd</sup> respondent has passed the impugned order without application of mind is false and untenable as the applicant was given an opportunity of personal hearing by the 2<sup>nd</sup> respondent who after taking into account the entire material pertaining to the applicant and the law laid down by the Hon'ble Supreme Court in *Dev Dutt's* case(supra), has come to the unanimous conclusion that there is no scope to change the earlier gradation.

6. The respondents further submits that it is well settled in law that in so far

as the matters of promotion and fixing of eligibility criteria are concerned, they are best left to the Management as they are policy matters and that Courts should adopt a hands off policy in such matters. It cannot be left open to an individual to dictate terms to the Management as to what eligibility criteria should be fixed and whom they should recruit/promote. In the present case, applicant has sought for a direction to quash the promotion of certain other candidates and also sought a direction to promote him. There is no accruing right in favour of the applicant to seek such a direction against the respondents. The recruitment and promotions were made pursuant to the recommendations of the Assessment and Appellate Committees constituted by the 2<sup>nd</sup> respondent which consisted of experts both internal and external, after adopting the evaluation methodology of the Screening Committee as the criterion for promotion of persons as it denotes the comprehensive performance of the individual that includes the marks obtained from PI, ACRs and the WR. The Appellate Committee recommended reduction of minimum qualification to SSLC for Technical, Scientific and Administrative posts with 4200-5400 Grade Pay. As such, there is no violation of any procedures in respect of the promotions and all the candidates promoted fulfilled the eligibility criteria prescribed by the committees. Hence, in the absence of any arbitrariness in the promotion process, the OA is liable to be dismissed with costs.

7. The applicant has filed rejoinder reiterating the submissions already made in the OA and submits that he has never sought for direction to quash promotion of certain other candidates but at the same time he submits that the respondents have to follow the rules on the subject and the dicta laid

down by the Hon'ble Supreme Court and other judicial fora. Therefore, he strongly refutes the averments made by the respondents in toto. In the recommendation of the Screening Committee at Annexure-R1, his case at Sl.No.6 is declined on the ground of 'NQACR' and the explanation for this is seen as 'not qualified in ACR grading(total marks received below 60%). This has happened because of the Administrative Officer lowering the grading of the applicant. Similar is the case as can be seen from Annexure-R2 where also solely because of APAR gradings, promotion has been denied to the applicant arbitrarily. The respondents at para11 of reply state that because the applicant sent a letter dtd.30.5.2014 requesting to review his assessment, the respondents constituted a screening committee on 31.10.2014. But the respondents go on to state that the said screening committee undertook the screening of staff members and not the applicant alone. This statement is contrary to each other. This committee which comprises the Administrative Officer who downgraded the APAR of the applicant has again not recommended the applicant for promotion. This again shows the arbitrariness on the part of the AO. The averment that the applicant has accepted the increment without demur is incorrect as he was highlighting his case with the respondents and was seeking for promotion. Merely saying that the Institute is yet to introduce the APAR for its staff members and therefore the question of providing copies of APAR does not arise would not suffice. The ACR copies could have been furnished to the applicant. The impugned order is indeed very cryptic and a mechanically passed one.

8. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The issue in this case is in a very small

compass. The applicant states that but for the downgrading of his ACR remarks in the year 2012-13 and 2013-14 wherein the Good/Very Good grading given by the reporting officer was reduced to Fair in 2012-13 and Fair/Satisfactory in the year 2013-14, he would automatically become qualified for promotion. The applicant claims that the reviewing officer who has rated him Good in the previous three years and also the subsequent year 2014-15, downgraded him without specifically giving any supporting reasons/documents. He also alleges that the reviewing officer to be a person with personal bias and undesirable influences even though no details for the same have been furnished. His plea therefore is that his representation against the grading in the ACR has not been accepted vide Annexure-A11 which is only a cryptic reply from the Director of the Institute. The respondents have given a detailed reply wherein the entire assessment process has been discussed in detail. From a perusal of the detailed procedure adopted by the institute as well as from the Annexures-R1 to R22, it is apparent that the institute adopts a very detailed and transparent process in terms of assessing the various staff members for promotion. The applicant would rely on Annexure-R1 wherein it is specifically stated in the recommendation of the screening committee that he is not qualified in ACR grading and therefore would claim that but for reduced grading in the two years 2012-13 and 2013-14, he would automatically become qualified for promotion. The respondents would contend that the promotions are decided not merely based on the Annual Confidential Reports but also based on the work reports and the performance in the personal interview. As can be seen from Annexure-R2, a detailed assessment is done with respect to each of the candidates and the

assessment committee has also adopted certain uniform norms to decide on promotion with effect from certain dates. In the case of persons with lower marks, advance increments etc., are given on a graded basis. Vide Annexure-R2, the applicant had secured the ACR score of 58% and Work Report and Personal Interview score of 45 with the result that he was kept in the category of status-quo and not granted any promotion. As can be seen from Annexure-R5, the difference in marks between the grading of Good and the grading of Fair/Average/Satisfactory is only one and as has been rightly pointed out by the respondents, the applicant was assessed not only based on the ACRs but also based on the work report, personal interview etc. and he had undergone this process four times and on one occasion when he had scored 55.8%, he had also been given one increment. The respondents have also furnished the details of the recommendations of the Appellate Committee vide Annexure-R14 and from all the records seen, it is obvious that a transparent and uniform process has been followed and apart from the applicant being personally affected by not being promoted, we could not find any other infirmity in the process and the procedure adopted by the respondents. As has been rightly contended by them, the applicant is not entitled for being upgraded or downgraded merely because of his perceptions and the reporting and reviewing authorities have every authority to grade the persons according to their assessment. This Tribunal cannot go into the issue of their judgment except where a malafide or bias is apparent on the basis of the records and proceedings. From a detailed perusal of the reply of the respondents as well as the various documents enclosed by them, it is apparent that there is no such case made out.

9. The OA is therefore dismissed. No costs.

(C.V.SANKAR)  
MEMBER (A)

(DR.K.B.SURESH)  
MEMBER (J)

/ps/

**Annexures referred to by the applicant in the OA.170/00061/2018**

Annexure-A1: Copy of the order dtd.24.8.2017 in OA.No.780/17  
Annexure-A2: Copy of norms and guidelines for screening and assessment  
Annexure-A3: Copy of letter dtd.7.5.2015 sent to applicant  
Annexure-A4: Copy of application dtd.28.7.2015  
Annexure-A5: Copy of reply dtd.21.8.2015  
Annexure-A6: Copy of representation dtd.21.4.2016  
Annexure-A7: Copy of appeal dtd.25.4.2016  
Annexure-A8: Copies of ACR/APARs for the years 2010 to 2015  
Annexure-A9: Copy of representation dtd.19.10.2017  
Annexure-A10: Copy of reminder dtd.10.11.2017  
Annexure-A11: Copy of impugned reply dtd.8.12.2017  
Annexure-A12: Copy of DOPT OM dtd.23.7.2009  
Annexure-A13: Copy of judgment of Hon'ble Supreme Court Dev Dutt v.UOI

**Annexures with reply statement:**

Annexure-R1: Copy of the Recommendations of the Screening Committee dtd.18.2.14

- Annexure-R2: Copy of Recommendations of the Assessment Committee-April 2014
- Annexure-R3: Copy of letter dated 30.05.2014 from the applicant requesting review of his Assessment
- Annexure-R4: Copy of Office Order No.IIA.D.BBQ.4079 dated 31.10.2014
- Annexure-R5: Copy of Recommendations of the Screening Committee dated 20.2.2015
- Annexure-R6: Copy of the of the Meeting of the Screening Committee dtd.26.3.2015
- Annexure-R7: Copy of Office Order No.IIA/Per.Div/Assmt/2015/70 dated 7.5.2015
- Annexure-R8: Copy of Recommendations of Screening Review Committee dtd.27.3.15
- Annexure-R9: Copy of Office Memorandum No.IIA/Per.Div/2015/586 dated 06.05.2015
- Annexure-R10: Copy of Recommendations of the Assessment Committee in May 2015
- Annexure-R11: Copy of letter dated 02.07.2015 communicating grant of advance increment to the applicant
- Annexure-R12: Copy of the letter from the rejected candidates to respondent No.1 dated 15.07.2016
- Annexure-R13: Copy of Office Order No.IIA.D.BBQ/5050 dated 02.09.2015
- Annexure-R14: Copy of Recommendations of the Appellate Committee in Sept.2015
- Annexure-R15: Copy of the Order of the Director dated 22.09.2015
- Annexure-R16: Copy of the email dated 23.09.2015 to the applicant regarding inspection of ACRs
- Annexure-R17: Copy of RTI Application dated 21.04.2016
- Annexure-R18: Copy of Office Memorandum No.IIA/Estt./2016/433 dtd.2.5.2016
- Annexure-R19: Copy of OA.No.780/2016 filed by the applicant before the Central Administrative Tribunal, Bangalore Bench
- Annexure-R20: Objections filed by the Institute to OA.No.780/2016
- Annexure-R21: Copy of letter no.IIA/CAT/NV/2017/3606 dtd.4.10.2017
- Annexure-R22: Copy of letter No.IIA/CAT/NV/2017/4334 dtd.14.11.2017

**Annexures with rejoinder:**

-NIL-

\*\*\*\*\*

