

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/01721/2018

DATED THIS THE 31st DAY OF OCTOBER, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Smt. Manimekalai Sunil Kumar
W/o C.Sunil Kumar
Aged about 36 years
Resident of 3C 203, DOS Housing Colony
RPC Layout, Vijaya Nagar
Bangalore.

Place of employment:
Working as Senior Assistant
In ISRO Telemetry Tracking &
Command Network
Plot No.12 & 13, 3rd Main, 2nd Phase
Peenya Industrial Area
Bangalore-560 058.

.....Applicant

(By Advocate Shri C.Sunil Kumar)

Vs.

1. Director
ISRO Telemetry Tracking &
Command Network
Department of Space
Plot No.12 & 13, 3rd Main, 2nd Phase
Peenya Industrial Area
Bangalore-560 058.
2. HEAD
Personnel & General Administration
ISRO Telemetry Tracking &
Command Network
Plot No.12 & 13, 3rd Main, 2nd Phase
Peenya Industrial Area
Department of Space
Bangalore-560 058.
3. Senior Administrative Officer
ISRO Telemetry Tracking &
Command Network

Plot No.12 & 13, 3rd Main, 2nd Phase
Peenya Industrial Area
Department of Space
Bangalore-560 058.

4. Administrative Officer
ISRO Telemetry Tracking &
Command Network
Plot No.12 & 13, 3rd Main, 2nd Phase
Peenya Industrial Area
Department of Space
Bangalore-560 058.
5. Union of India
Rep. by Secretary
Ministry of Personnel, Public Grievances & Pensions
North Block
New Delhi-110 001.Respondents

(By Advocates Sri V.N.Holla, Sr.CGSC)

O R D E R

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

The case of the applicant is that she joined ISRO Telemetry Tracking & Command Network(ISTRAC) in 2012 and is working as Senior Assistant since 2016. She had been rated outstanding from the years 2015 to 2016 and also received numerous rewards and certificates during her tenure from the office for her participation in intra office & inter-centre competitions(Annexure-A4 series), cash award for Technical Paper submission, Hindi implementation at work, appreciation from Manager, HRD, ISTRAC for outstanding contribution towards training programme of internal candidates appearing for Departmental Promotion Exam in 2017(Annexure-A3). She submits that when she submitted her self-appraisal of the APAR for the year 2017 to the 4th respondent(reporting officer) who was proceeding on maternity leave from 2.1.2018 onwards, the same appears to have been forwarded by the 4th respondent to the reviewing and counter signing officer(2nd respondent) only on 19.4.2018(Annexure-A5 series). The 2nd & 4th respondents who have closely supervised the work of the applicant

have overlooked the contents of the applicant's appraisal and contribution while assessing her performance which amounted to unreasoned downgrading. This was in violation of DoP&T guidelines and the entries in the APARs for the period is Tending to Out Standing(TOS) as the downgrading had been done illegally without having stated any reasons whatsoever.

2. The applicant submits that APAR was used as an instrument of vendetta or as a platform for settling old scores. The email communication that evidently supports the cause of friction between the applicant and 4th respondent during March 2017, documentary evidence obtained through RTI from 2nd & 3rd respondents(Annexure-A10). Being not satisfied with the grading given in the APAR by both reporting officer and reviewing officer, the applicant communicated her unwillingness to accept the grading. She also submitted a detailed representation on 8.6.2018 to the 2nd respondent with a request to record the assessment objectively. The 3rd respondent vide order dtd.5.7.2018(Annexure-A1) replied the applicant that the Appellate Authority(1st respondent) decided to maintain status quo. When the applicant met the 1st respondent on 9.7.2018, she was advised to meet both 2nd & 4th respondents requesting to change the grading. On that account, the applicant met both 2nd & 4th respondents and the detailed report was also communicated to the 1st respondent informing that the matter was not heard in due manner and the same would be taken up to the next level in order to get it addressed in a fair and just manner(Annexure-A6). She submits that her representation against adverse/below benchmark entries were not disposed of by the 1st respondent as per extant rules on the subject but at the level of 2nd respondent himself against whose grading and remarks, representation was submitted. The 1st respondent being the appellate authority

has not acted in a quasi judicial capacity as required under DoP&T OMs dtd.13.4.2010, 19.5.2011 & 31.1.2014(Annexure-A11) but just gone by the advice of the 2nd respondent. The 1st respondent had upgraded APARs of few officials who submitted representations, without having provided a clear rationale on the basis of which this distinction had been made. The logical process of upgradation made by the competent authority in respect of few other officers has been denied while considering the applicant's request for upgradation. The applicant would be within the probable zone of consideration for promotion to the post of Officer in administrative areas in 2019-20 for which the APAR grading of preceding five years to be reckoned. She has already qualified in two out of three papers in 2018, February exam conducted by ISRO HQ. She is the only candidate who has cleared two papers in 2017 exam from ISTRAC. The APAR for the year 2018 would be an impediment to avail opportunity to improve excellence and thereby career progression, depriving her constitutional rights guaranteed under Article 51(A)(i) that enjoins upon every citizen to constantly endeavour to prove excellence individually. When the applicant submitted another representation(Annexure-A7 series), the 3rd respondent has replied vide letter dtd.3.9.2018(Annexure-A2) which is self-contradictory order on the subject. As per the instructions in DoP&T OM dtd.13.4.2010(Annexure-A8), representation should be considered by the appellate authority only and there is no other competent authority above the appellate authority. When the applicant has highlighted the said contradiction through her email(Annexure-A9), there was no response from any of the respondents. Being aggrieved by the same, the applicant has filed the present OA seeking the following relief:

- i. *Call for the relevant records leading to the issuance of the impugned letter Ref No. ISTRAC/ADMN/ADV/2017 dated 05/07/2018 and*

letter No. ISTRAC/ADMN/ADV/2018 dated 03/09/2018 issued by the Respondent 03, Annexure-A1 & A2.

- ii. Quash the downgraded entry of the reporting and reviewing officers for the year 2017 and set aside the impugned letter Ref No. ISTRAC/ADMN/ADV/2017 dated 05/07/2018 and letter No. ISTRAC/ADMN/ADV/2018 dated 03/09/2018 issued by the respondent 03, Annexure-A1 & A2, as arbitrary, discriminatory and void for the reasons stated in the application.*
- iii. Direct the respondents that the APAR for the year 2017 be filled up on the basis of the self assessment/resume submitted by the applicant and to consider the representation of the applicant on merits and pass reasoned orders.*
- iv. Grant any other order or direction or other relief as deemed fit by this Hon'ble Tribunal, in the interest of justice, equity and fair play in administration.*

3. On the contrary, the respondents in their reply statement have submitted that the applicant joined as Assistant in PB-1 with Grade Pay of Rs.2400 w.e.f. 4.5.2012 at ISTRAC, Bangalore. She was posted to work in Administrative wing and was promoted as Sr.Assistant w.e.f. 1.7.2016 and currently holding the post. For the year 2017, the applicant was assessed as 'Tending to Outstanding"(TOS). Not satisfied with the above grading, the applicant appealed to the Appellate Authority. After obtaining the views of reporting and reviewing officers, the Appellate Authority decided to maintain status-quo or no change in the grading awarded to the applicant. The same was conveyed to the applicant vide letter dtd.5.7.2018. As per DoP&T OM dtd.14.5.2009(Annexure-R1), the full APAR including the overall grade and assessment of integrity shall be communicated to the concerned officer after the report is complete with the remarks of the Reviewing Officer and Accepting Authority wherever such system is in vogue. After receipt of the same, the concerned officer/employee shall be given the opportunity to make any representation against the entries and the final grading given in the report within a period of 15 days from the date of receipt of the APAR. The competent authority may consider the representation if necessary, in

consultation with the reporting and reviewing officers and shall decide the matter objectively based on the material placed before him within a period of thirty days from the date of receipt of the representation. The competent authority after due consideration may reject the representation or may accept and modify the APAR accordingly. The decision of the competent authority and the final grading shall be communicated to the officer reported upon within 15 days of receipt of the decision of the competent authority by the concerned APAR section. The applicant submits that she has been rated Outstanding for the years 2015 & 2016 and has received numerous rewards and certificates. But from the year of joining till date, her grading in APARs viz., for 2012 it is graded as 'very good', for 2013 it is Tending to Outstanding(TOS), for 2014 it is TOS, for 2015 it is Outstanding(OS), for 2016 it is OS and for 2017 it is graded as TOS. Thus it is clear that the applicant has been graded OS only for two years i.e. 2015 & 2016 and not throughout her career. Also the grading of TOS is not an adverse grading or below benchmark grading for promotion/MACP. The certificates submitted by the applicant belong to the period 2013 relating to various competitions and the assessment made in the APAR pertains to that particular year i.e. 2017 of assessment only. An employee obtaining an outstanding grading in the previous years has no relevance for the assessment of the next year which depends on the work carried out and the performance of the employee during that year. The assessment is confined to the appraisee's performance during the period of report only. The contention of the applicant that the APAR was written in an unfair and discriminatory manner by both reporting and reviewing officers is not true and is totally denied. The applicant has met 2nd & 4th respondents with the sole objective of making baseless allegations and false complaints against different authorities.

4. The respondents submit that in the year 2017, the applicant was assigned only with review work for Scientific & Technical stream which is guided by screening procedures and review norms. In APAR, markings are done based on the contribution made by employees during the review period. Further continuous observation and continuous evaluation are done by the reporting officer. APAR was evaluated with due care and attention. Weightage has been given on the assigned work output, functional competency. Tending to Outstanding is not an adverse grading. The applicant has stated that her representation against adverse, below bench mark entries were not disposed of at the discretion of the competent authority as per extant rules on the subject. The representations are disposed of with the approval of the competent authority as per the procedures and the time limits prescribed for such disposal. Appeal is considered by the Appellate Authority and disposed as per the extant orders on the subject informing the applicant that if she had any grievances, the same may be addressed to the competent authority for consideration.
5. The respondents further submit that the training was an informal training held after office hours, the applicant was advised to stick to the timings specified by Human Resource Department(HRD) so that other official work assigned to her and other participants are not affected. The applicant was found in the training room along with other candidates without following instructions and the classes were conducted during office hours affecting office work. The advice given to the applicant by the controlling officer was in the interest of office to ensure smooth working of section. Applicant did not follow orders of the controlling officer. Her complaint in the email clearly shows that she was arrogant and insubordinate, strong reaction to the comments are made by the applicant criticizing the

reporting officer(Annexure-R2). A comment for improvement is taken as negative, adverse comment by the applicant. The APAR gradings have been awarded based upon her performance and the applicant has to accept it. The statement that the grading will impede her career progression is denied since the selection for Officer grade includes written test, interview and APAR gradings(60:30:10). Out of total 100 marks, only 10 marks is appointed for the APAR gradings and the candidates has to get 50% in each of the components that is written test and interview also. The applicant has taken up the written test for the officers in the area of administration and cleared only two papers out of three and she has to take up the exam again in the year 2019 to qualify for the interview. If the applicant qualifies in the written test in 2019 and called for interview, her grading of last 5 years i.e. 2014-2018 will be considered. The assessment of 2018 is yet to be given. She has only two OS grading and two TOS gradings for the previous years. Further, TOS is not an adverse grading to deprive the applicant from taking up the promotional examination for the officers grade. There is no deprivation to applicant to Article 51(A)(j) of the constitution by the respondents. Hence, the OA being devoid of merit is liable to be dismissed.

6. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that the Dept. of Space(DOS) OM dtd.27.1.2010(Annexure-A12) is consciously violated in her case. The vicious cycle of doubtful delay in preparation/completion of APAR continued in her case from every level of authority. Hence, it is a fit case where the whole assessment should be nullified and the assessment for the said period should be purely based on the self-appraisal of the applicant as given in DoPT guidelines dtd.16.12.2016(Annexure-A13). The impugned orders at Annexure-A1 & A2 of competent authority do not

contain specific reasons for maintaining status-quo. As per DOPT OM dtd.19.5.2011 and OM dtd.31.1.2014(Annexure-A11 series), 'such orders cannot be termed as disposed off in a quasi-judicial manner'. These two DoPT guidelines are consciously violated by the respondents. In the reply, the gradings for 2012 have been mentioned in a table whereas the applicant joined ISTRAC on 4.5.2012 and went on maternity leave from 23.7.2012 onwards thereby she worked for 79 days only for the assessment year 2012 and as per the Swamy's book extract on seniority and promotion(Annexure-A14), she was not entitled for assessment for the year 2012. Nowhere in the OA, TOS is mentioned as adverse. However, the process of arriving at the overall grading as TOS and piecemeal adverse remarks recorded in the assessment are challenged before this Tribunal. The whole process of assessment for the year 2017 was unfair and discriminatory manner. Hence, the assessment for the year 2017 is fit to be nullified. Although she has no material evidence to show for the assessment year 2017, the malicious intention of the respondents are very well established wherein similar manipulation carried out for the year 2018(Annexure-A16). On multiple accounts, DoP&T orders and DOS OM's on the subject were deliberately violated with the sole malicious intention of demoralizing the applicant at workplace.

7. The respondents have filed additional reply with the reiteration of the reply statement and submit that the APAR for the year 2017 was considered by the Appellate Authority impartially in response to appeal of the applicant and recommended for status-quo. The APAR has been prepared and maintained as per the orders issued by the Dept. of Space(DOS) from time to time. The Annexure-A13 furnished by the applicant is with regard to AIS(PAR) Rules 2007

which is relevant in respect of All India Service officers. It is not applicable to the present case. The assessment made in respect of particular year is with reference to the work output, performance during the year without any relevance to the previous APAR grading. The assessment is confined to the appraisee's performance during the period of report only. As per DOPT OM dtd.19.5.2011, the competent authority after due consideration of the representation may reject or may accept to modify the APAR accordingly. In the case of upgradation of the final grading given in the APAR, specific reasons therefore needs to be mentioned in the order of the competent authority. If such specific reasons are not given for such upgradation, such orders cannot be termed as disposed of in a quasi judicial manner. In the case of the applicant, the appellate authority has disposed of the appeal rejecting the request and maintaining status quo. In such cases, reasons need not be furnished by the appellate authority. Since the appeal had been disposed, the applicant was informed that if she had any grievances, the same may be addressed to the competent authority for consideration. The representation forwarded by the applicant was again with reference to the assessment made for the year 2017. Hence, she was informed that as the appeal has already been disposed of by the competent authority, no further representation will be entertained on the matter. The contention of the applicant of not satisfying 3 months for the APAR 2012 is not relevant in the present case. As she worked in year 2012 and remained on leave, APAR had to be written. The respondents have also filed a memo enclosing therewith the computer sheet of Access Control System Report on the attendance and late coming of the applicant for the year 2017.

8. The applicant has filed additional rejoinder stating that she qualified in the written

test of Departmental Promotion Committee and attended interview on 24.6.2019 organised by ISRO HQ for the post of Administrative Officer in ISRO. Applicant is the only candidate from ISTRAC found fit and selected by the DPC. Although she did her interview well and received instant commendation from the panel members of DPC, she ended up in 10th place in the panel drawn by DPC(Annexure-A19) just because of the immoral APAR gradings. APAR grading for preceding 5 years is usually accounted as one of the determining factor while assessing the employees for the higher post in ISRO. The whole process of assessment for the year 2017 was not only in an unfair and discriminatory but disgracefully the foulest manner wherein no prescribed Government orders and guidelines on the subject was given its due respect and place and not obeyed during this particular transaction of business. Hence, the assessment for year 2017 is fit to be nullified.

9. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The main grouse of the applicant is that when she was given an overall grading of Outstanding for the years 2015 and 2016, for the year 2017, it has been given as Tending to Outstanding. The applicant also objects to certain remarks relating to her punctuality and the need for moderating in her reactions, her need to improve coordination etc., which has been noted by the reviewing officer. The applicant would claim that in view of her outstanding work in all the years and specifically with respect to the glowing remarks given by the same reporting and reviewing officers for the year 2016, the downgrading of her overall grading from outstanding to tending to outstanding is clearly an instrument of vendetta with the sole intention of maliciously tarnishing the image of the applicant in the workplace. The respondents would contend that

her grading was not uniformly outstanding and except for the years 2015 and 2016, her overall grading had been tending to outstanding in the years 2013 and 2014 and very good in the year 2012. They also would contend that tending to outstanding is not an adverse grading or below benchmark grading for promotion/MACP. Further with regard to the apprehension of the applicant relating to the further promotions, they would state that for her next promotion to the selection for Officers' Grade, the criteria for such selection is written test, interview and APAR grading which are taken together with the percentage of 60% for written test, 30% for interview and 10% for APAR grading. That is, out of 100 marks, only 10 marks are apportioned for APAR grading and the candidates have to get 50% of each of the components in the other two which have greater weightage. They have reiterated that tending to outstanding is not an adverse grading to deprive the promotional chances to the Officers' Grade. The applicant would also claim that for maintaining the status-quo in her APAR, reasons are not given for which explanation has been given by the respondents that there was no need to give reasons as it was only decided to maintain status quo and no upgradation was given which is as per DoP&T OMs. From an overall examination of the procedure followed for handling the representation, it is apparent that it has been given due consideration at every level. As reiterated by the respondents, the grading of tending to outstanding is not an adverse grading even though it is not the best of the gradings and the applicant apparently being a very capable and efficient employee of the organization who having been given two outstanding gradings in the previous two years may have had the expectation for a similar grading in the year 2017 and since the overall grading finally given was one notch below, she might have had some grievance relating to the assessment of her performance. When a person can readily accept positive remarks, he/she

must also take certain not so positive remarks with the same spirit for improvement and not allege bias immediately. However, the respondents have repeatedly reiterated that the gradings given for any year depends on the work output and performance during the year under review without any reference to the APAR grading in the previous years. It is also seen that the respondents' overall grading of tending to outstanding had been given in the month of May 2018 itself whereas the various emails of the applicant making certain allegations against the respondents are all subsequent to this. The reviewing authority had in fact modified the comments relating to her being punctual and in fact drawn her attention to the same issue in the APAR of the 2016 also. The respondents have also furnished the attendance of late coming details of the applicant in the year 2017. The applicant has further produced Annexure-A19 wherein the respondents have drawn up panel for promotion to the post of Administrative Officer based on the interview held on 24.06.2019 wherein the applicant is included in the panel. Since the weightage given in the APAR for promotion is only 10% and the respondents have clearly reiterated that tending to outstanding is not considered as an adverse remark, it is clear that the promotional opportunities for the applicant are not affected in any way by the said gradings. It may be disappointing for the person like the applicant to see a slight downgrading of the overall grading in any particular year but as rightly contended by the respondents, this cannot be termed as an adverse remark against her and her inclusion in the panel is also a testimony that the same is not held against her. The applicant herself admits that she is the only person who has attended the interview from the respondents' organization for the promotion and she having been included in the panel vide Annexure-A19, we find no justification in interfering with the final grading given by the respondents for the year 2017. It is

apparent that no prejudice is made out against her and no injustice done to her as explained by the respondents.

10. 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.170/01721/2018

- Annexure-A1: Downgrade entry of the reporting and reviewing officers for the year 2017 impugned letter Ref.No.ISTRAC/ADMN/ADV/2017 dtd.5.7.2018
- Annexure-A2: Letter No.ISTRAC/ADMN/ADV/2018 dtd.3.9.2018
- Annexure-A3: Copy of the appreciation letter from manager HRD dtd.7.4.2017
- Annexure-A4: Copy of certificates of achievements issued by ISTRAC/ISRO management
- Annexure-A5: Copy of APAR for the year 2017 dtd.5.6.2018 and representation against grading to respondent 02 dtd.8.6.2018
- Annexure-A6: Copy of the representation that applicant communicated to respondent 01/Appellate authority that the matter was not addressed in fair and just manner dtd.11.07.2018
- Annexure-A7: The impugned communication from respondent 03 encouraging the applicant for second and subsequent representation asserting with multiple directions
- Annexure-A8: Copy of DoPT order – OM dtd.13.4.2010 instructing to consider the representation by the appellate authority only and there is no other authority above appellate authority on the subject
- Annexure-A9: Copy of email highlighting the contradiction dtd.6.9.2018
- Annexure-A10: Copy of email communication evidently validating the cause of friction between the applicant and respondent 04 during march 2017;

documentary evidence obtained through RTI from respondents 02 & 03 where applicant case for adhoc promotion was suppressed dtd.

February 2017

Annexure-A11: Copy of DoPT orders – OM instructions on entries of APAR and proper disposal of representation in quasi-judicial manner for upgradation/downgradation of the final grading dtd.19.5.2011 & 31.1.2014

Annexures with reply statement:

Annexure-R1: Office Memorandum dtd.14.5.2009

Annexure-R2: An email from Manager, HRD to R2 & 4

Annexures with rejoinder:

Annexure-A12: DOS OM dtd.27.1.2010

Annexure-A13: DoPT guidelines dtd.16.12.2016

Annexure-A14: Swamy's book extract on seniority and promotion

Annexure-A15: An email from Manager HRD & RS

Annexure-A16: Copies of APARs

Annexure-A17: Copy of email of the applicant

Annexure-A18: Copy of APAR of the applicant

Annexures with additional reply:

-NIL-

Annexures with Memo dtd. 06.2019

Annexure-1: Computer Sheet of Access Control System Report on the attendance and late coming of the applicant for the year 2017

Annexures with rejoinder:

Annexure-A5 extract: Copy of APAR for the year 2017 dtd.5.6.2018 and representation against grading to respondent 02 dtd.8.6.2018

Annexure-A12 extract: Time schedule for preparation/completion of APARs

Annexure- A19: ISRO letter dtd.1.7.2019
