

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No. 594/2013

Dated this Friday the 11th day of October, 2019

CORAM: R. VIJAYKUMAR, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Rahul Sharma
Presently working as
Technician 'D', Heavy
Water Division, Bhabha
Atomic Reserach Centre,
Trombay, Mumbai - 85.
And residing at
Plot No.54, Tapti A.
BARC Colony, Anushakti
Nagar, Mumbai - 84. *Applicant*

(By Advocate *Shri Ramesh Ramamurthy*)

VERSUS

1. Union of India through
the Secretary Department
of Atomic Energy,
Govt. of India,
Anushakti Bhavan,
CSM Marg, Apollo
Bandar, Near Gate
Way of India, Mumbai - 1.
2. The Director, BARC,
Anushakti Nagar,
Trombay, Mumbai - 85.
3. The Controller, BARC,
Central Complex,
Anushakti Nagar,
Trombay, Mumbai - 85.
4. The Director
Chemical Engineering -
Group, BARC, Trombay,
Mumbai - 400 085.

5. The Director/Head
 Heavy Water Division
 BARC, Trombay,
 Mumbai - 85. **Respondents**

(By Advocate Shri R.R. Shetty)

ORDER

Per: Ravinder Kaur, Member (J)

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"8(a)." that this Honourable Court be pleased to quash and set aside the impugned order dated 10.10.2012 (Annexure A-1) and order dated 03.01.2016 (Annexure A-2) to this application;

8(b) that this Hon'ble Court be pleased to quash and set aside the adverse remarks communicated 2010-2011 under letter dated 03.11.2011 (Annexure A-3) & reply dated 19/12/2011 (Annex A-4) rejecting the representation against said adverse remarks and appeal dated 20.02.2013 (Annex A-5).

8(c) that this Hon'ble Court be pleased to direct the respondents to expunge the adverse material and also upgrade all the ACR/APAR gradings of the applicant for the period prior to 01.01.2006 and treat the applicant's gradings as up to the required bench marks and direct reconsideration of the applicant for promotion as Technician grade D with effect from 01.11.2006 with all consequential service benefits including continuity of service, full back wages, seniority, PRIS benefits and any other admissible service benefits from the due dates;

8(d) That this Hon'ble Court be pleased to direct that the adverse material in the ACR/APAR of 2010-2011 be expunged and the grading for the said year be upgraded upto the bench mark required for being eligible for further promotion.

8(e) That this Hon'ble Court in pursuance of prayer clauses (a) and (d) (b) above direct the respondents to consider and promote the applicant to the post of Technician Grade F with effect from 01.07.2011 and grant the applicant all consequential service benefits including full back wages, pay fixation, seniority and all other admissible service benefits from the due date till date;

8(f) that such other and further order of orders be passed in the facts and circumstances of the case, as may be required.

8(g) that the costs of this application be granted."

2. The applicant had joined BARC in the Heavy Water Division as a stipendiary trainee category-II on 18.12.2000. After training of two years, he got initial posting as Tradesman - C. The post of Tradesman was re-designated as Technician. His next promotion to the grade of Technician Grade 'D' w.e.f. 01.07.2010 was due after four years of service and Technician 'F' again after five years. Shri Jitendra Singh and Shri R.N. Patra, who had joined the service alongwith him on 18.12.2000 or even thereafter were given their first promotion as Technician 'D' w.e.f. 01.11.2006 and the further promotion as Technician 'F' w.e.f. 01.07.2011. Whereas the applicant was promoted as Technician 'D' w.e.f. 01.07.2010 i.e. after 8 years of his joining the service. It is further stated that the promotion and recruitment norms were

initially issued vide Office Memorandum dated 20.10.2006 (Annex A-6) which were revised in January, 2010 vide Annex A-7 and further revised in June 2011 vide Annex A-8.

2.1 The applicant made representation dated 28.02.2011 (Annex A-9) to the Director, Chemical Engineering Group, BARC for his non promotion from the due date. Vide letter dated 01.08.2011, for the first time he was communicated that his gradings in the past years were not upto the bench mark and therefore he was not promoted in 2006. The applicant claims that he was not communicated officially any adverse material or any grading below the benchmark in the ACR/APAR for the previous years at any point of time nor the same were communicated vide reply dated 01.08.2011 (Annex A-10). The applicant claims that till the date of the filing of the OA, he was not communicated the gradings which are below benchmark for the period upto 31.03.2010.

2.2 He approached under RTI Act and vide reply dated 10.11.2010 (Annex A-11) of the respondents No.RTI/BARC/2009/08/409/2361 came to know about the gradings he received during

the period from 2002-2010.

2.3 He made further representation dated 16.03.2012 (Annex A-12) addressed to Director, BARC on the subject of delayed promotion and adverse material/grading in the ACR/APAR to which he received reply dated 10.10.2012. Thereafter, he received order dated 03.01.2013 with reference to his representation dated 16.03.2012 and a subsequent letter dated 01.12.2012 sent by him. He was informed that his representation was rejected and that promotion granted from 01.07.2010 was as per promotion norms and the subsequent promotion to the post of Technician 'F' will also be considered as per existing promotion norms. The applicant stated that in both the reply dated 10.10.2012 and the order dated 03.01.2013, the respondents have not dealt with the issue of non communication of the adverse material and grading below the benchmark for considering the case of the applicant for promotion as Technician 'D' and Technician 'F' respectively. His representation has been dealt with in a perfunctory manner. It is further stated that he was not granted promotion on account of the

ACR/APAR grading for the relevant year prior to 01.01.2006 and the adverse material on record which was never communicated to him and has caused prejudice to the applicant.

2.4 The applicant further stated that the respondents communicated adverse remarks and below benchmark grading in his APAR/ACR for the period 2010-11 on 03.11.2011 beyond the period mentioned in the OM and the instructions of the Government for communications of such adverse material which was 3 months from the end of the reporting period i.e. on or before 30.06.2011. This belated communication prejudiced the applicant as he got limited time to improve his performance. Further the adverse remarks and gradings were awarded to the applicant without there-being any justification.

2.5 The applicant has challenged the impugned orders dated 10.10.2012 and 03.01.2013 passed by the respondents rejecting his representations as unsustainable in law.

3. The respondents have filed detailed affidavit in reply whereby it is submitted that employees belonging to Scientific and Technical category including the applicant are governed

by a non-vacancy based "Merit Promotion Scheme" (MPS for short) and are promoted based on the merit of the work done/achievements made by the concerned official during a given period (termed "Minimum Eligibility Period" in the grade) from one grade to another higher grade in the same category as per the notified promotion norms. Their cases for promotion are considered by the Screening Committee periodically and recommended for interview by the Selection Committee subject to fulfilling the existing Promotion Norms. For example, an employee holding the post of Technician/B is promoted to the post of Technician/C in the same place by upgrading the post of Technician/B to Technician/C for which vacancy in the post of Technician/C is not required. Further, the Scientific and Technical Personnel have to fulfill the Minimum Eligibility Period (MEP for short) in the post, required ACR/APAR grading, qualify in the Trade test and an interview by a Standing Selection Committee for being promoted to the next higher grade.

3.1 It is stated that the applicant was absorbed in the post of Tradesman 'C' w.e.f.

18.12.2002 and was posted in the Heavy Water Division (HWD) under the control of respondent No.5. He was graded "A" ACR grading for the period from 18.12.2002 to 31.07.2003. However, his output and overall qualities during the subsequent years were not upto the mark, hence he was graded 'B+' and 'B' for the period from 01.08.2003 to 31.07.2007. Further, the minimum eligibility period for consideration for promotion is prescribed in the promotion norms. The Scientific/Technical staff of the respondents can be considered for promotion only after they fulfill the promotion norms.

3.2 It is further stated by the respondents that the promotion norms underwent revision in the years 2009, 2010 and 2011. The applicant was considered for promotion on fulfilling the norms and was promoted to the post of Technician Grade 'D' w.e.f. 01.07.2010. After accepting this promotion, the applicant made his first representation on 28.02.2011 (Annexure A-9) for considering him for promotion to the post of Technician 'D' retrospectively w.e.f. 01.11.2006 at par with his batchmates. The respondents considered the representation/appeal preferred by the applicant and after going through the records,

found that the ACR/APAR grading given to the applicant were appropriate and thus advised him to improve his output and performance.

3.3 It is stated that the applicant had applied for permission to acquire additional qualification of B-Tech (Chemical) vide application dated 28.10.2004 and again for Diploma in Electronics (part time) vide application dated 04.06.2007 which were approved by the Head of Division but he has not completed these courses which reflects his insincerity to his own cause.

3.4 The respondents have claimed that there were complaints from various officers /supervisory staff against the applicant for his non co-operation and dereliction of duty. Two such complaints dated 27.07.2010 and 07.12.2012 are placed on record as Exhibit R-1 and R-2 respectively.

3.5 Regarding the representations of the applicant dated 28.02.2011 and 16.03.2012 to Director, BARC, it is submitted that they were suitably replied.

3.6 Respondents further state that the applicant never made any representation against

non consideration of his case for promotion in the year 2006 or even 2007 immediately after his batch-mates were promoted to the grade of Technician 'D' as he was aware of that his output was not upto the mark.

3.7 The applicant when fulfilled the promotion norms in the year 2010, he was duly considered for the promotion. On being promoted, he accepted the promotion to the grade of Technician Grade 'D' w.e.f. 01.07.2010 and it is only thereafter, he made representation seeking promotion with retrospective effect which act is an afterthought and that OA is barred by limitation.

3.8 Regarding the applicant comparing his technical promotion with Shri Jitendra Singh and Shri R.N. Pathra referred above, it is stated that joining of the applicant and these two persons on the same date would not confer any right to get promotion and that in the merit promotion scheme, it is the performance APAR grading, screening, result, interview performance etc. which matters. It is demonstrated that a person may get promotion

within three years provided he is having three 'A' grading in the APAR and/or in four years if he is having four "A" grading and so on. The two persons referred above were meeting the promotion norms in terms of the various attributes well before the applicant fulfilled the norms.

3.9 Regarding non communication of ACRs to the applicant, the respondents have relied upon OM No.21011/1/2010-Estt.A (Exhibit R-3) that as per the rules prevailing at the relevant time, the ACR gradings were not disclosed to the employee and only adverse remarks, if any, in the ACR were communicated.

3.10 Further there were no adverse remarks in the APAR for the period 2010-2011 and the pen picture of the applicant, by the reporting officer in the APAR for the year 2010-2011 was wrongly interpreted by him as adverse remarks. Since there were no adverse remarks in the APAR for the period 2003-2010 there was no question of communicating the same to the applicant.

3.11 The applicant was informed vide Annex A-1 and Annex A-2 i.e. promotion to the grade Technician Grade 'D' w.e.f. 01.07.2010 was as

per his performance in the CR grading be fitting to the promotion norms in the department.

3.12 It is stated that the Director, Chemical Engineering Group - Respondent No.4 in consultation with Director, BARC vide reply dated 11.10.2012 disposed of the applicant's representations dated 01.10.2012 and 16.03.2012 explaining to the applicant the ACR/APAR grading given to him and his promotion as Technician 'D' w.e.f. 01.07.2010. It is stated that all the representations of the applicant were disposed of in view of the existing promotion norms.

3.13 Non promotion of the applicant was due to the reason that he was not fulfilling the promotion norms under Merit Promotion Scheme which does not envisage any due date. It is stated that the OA is devoid of merits and is liable to be dismissed.

4. The applicant has filed rejoinder and reiterated his averments in terms of the OA.

5. We have heard Shri Ramesh Ramamurthy, learned counsel for the applicant and Shri R.R. Shetty, learned counsel for the respondents at

length.

6. Learned counsel for the applicant has laid stress mainly on the ground that the applicant was not communicated the adverse remarks and as such he neither got opportunity to improve himself nor he could make representation to the concerned authority. In support of his arguments, he relied upon the judgment of Hon'ble Apex Court in the case of Dev Dutt Vs. Union of India and Others reported in (2008) 8 SCC 725.

7. On the other hand, learned counsel for the respondents has submitted that the colleagues of the applicant were promoted to the grade of Technician Grade 'D' in the year 2006 but the applicant did not question his non promotion at the relevant time. Thereafter the applicant was promoted to the grade of Technician Grade 'D' w.e.f. 01.07.2010 and he accepted the promotion knowingly that his colleagues were promoted on 01.11.2006 and therefore now he cannot claim promotion w.e.f. the date when his colleagues were promoted in 2006, as the principle of estoppel comes into operation.

8. It is further argued that the OA is barred by limitation as the cause of action in respect of relief claimed in paras 8(a) and 8(c) by the applicant in the present OA arose on the promotion of his colleagues on 01.11.2006 whereas he made representation dated 28.02.2011 (Annexure A-9) seeking his promotion to the next higher grade to the post of Tradesman/Technician 'D' w.e.f. 01.11.2006 instead of 01.07.2010. It is submitted that this Tribunal need not go into the remarks in the ACR of the applicant or even the gradings which he received during the relevant years as he did not challenge within stipulated period of time, his supersession in the year 2006 when his colleagues were promoted. It is submitted that he has not explained the delay in filing the present OA after lapse of more than 7 years, therefore the present OA is liable to be dismissed on this ground itself.

9. On the merits of the case, learned counsel for the respondents has argued that there were no adverse remarks in the ACRs which could be communicated to him. He did not make any representation to the concerned authorities

questioning his non promotion in the year 2006 or even in 2007 immediately after his colleagues were promoted to the grade of Technician 'D'. The applicant was aware of the fact that his output was not upto the mark and for this reason he did not question his non-promotion at the relevant time. Further that once the applicant fulfilled the promotion norms in the year 2010, he was duly considered and promoted to the post of Technician Grade 'D' which was accepted by him without raising any objection. He willingly participated in the trade test and interview conducted by the Standing Selection Committee and on being promoted, he accepted the promotion to the grade of Technician 'D' w.e.f. 01.07.2010. The representation made by him for promotion with retrospective effect is afterthought as he had already accepted the promotion.

10. It is further argued that the applicant belongs to Scientific and Technical category and is governed by a non-vacancy based on the 'Merit Promotion Scheme' and all such employees belonging to this category are promoted on the basis of merit of the work done and the

achievements made during a given period from one grade to another higher grade in the same category as per the notified promotion norms.

It is argued that the applicant was though graded 'A' for the period from 18.12.2002 to 31.07.2003, however, later on the applicant's output and his overall qualities during the following years were not upto the mark and as such he was graded B+ and B for the period from 01.08.2003 to 31.07.2007 and since he did not fulfill the promotion norms, he was not considered for promotion alongwith his batchmates, but as soon as he fulfilled these norms, he was promoted to the grade of Technician 'D' w.e.f. 01.07.2010.

11. It is further submitted that the cases of promotion of the Scientific and Technical category employees are considered by the Screening Committee periodically and recommend for interview by the selection committee subject to fulfilling the existing promotion norms. Further that though time limits are prescribed for consideration of the case for screening for promotion, however the candidate shall be considered for interview/promotion

only in case he fulfills the promotion norms under Merit Promotion Scheme, the performance of the candidate, his APAR grading, screening result, interview performance etc. plays an important role in getting the promotion. Since in the present case the applicant did not fulfill the promotion norms, he was not considered for promotion to the grade of Technician 'D' alongwith his batchmates in the year 2006 who fulfilled the promotion norms and consequently, were promoted. Thus the case of the applicant cannot be compared with their case. It is also submitted that both these persons had upgraded their knowledge by completing higher education while attending regular official duties whereas the applicant though had taken permission for B.Tech in Chemical Engineering from JRN Rajasthan, Vidyapith, Udaipur in 2004 but he did not complete the course. It is also pointed out that the applicant was granted promotion for pursuing Diploma in Industrial Electronics from K.J. Somaya Polytechnic in June 2007 but he did

not complete the same.

12. Learned counsel for the respondents has further argued that the representation and the appeal preferred thereafter by the applicant were considered by the respondents and on the basis of the record available, it was opined that the ACR/APAR gradings given to the applicant were appropriate. He was advised to improve his output and performance. Learned counsel further made reference to certain complaints against the applicant received from some officer/supervisory staff about his non co-operative attitude and dereliction of duty which are Exhibit R-1 and R-2 on record. It is submitted that in view of the fact that prior to OM dated 13.04.2010 (Exhibit R-3) there was no provision for communicating to the employees the below benchmark grading in the ACR and that only the adverse remarks in the ACRs had to be communicated whereas in the present case, there were no such adverse remarks in the ACRs of the applicant.

13. Learned counsel for the respondents in support of his claim is relied upon the judgment of Hon'ble Supreme Court in the case

of State of Uttarakhand and Another Vs. Sri Shiv Charan Singh

Bhandari and Others, reported in 2013 (11) Scale 56.

14. Learned counsel for the respondents has prayed that the OA in the facts and circumstances of the case is liable to be dismissed.

15. After hearing submissions of the learned counsels for both the parties, we have carefully gone through the material available on record.

16. The learned counsel for the respondents has argued that there were no adverse remarks in the ACRs of the applicant for the period relevant for promotion to the next higher grade to the post of Tradesman/Technician w.e.f. 01.11.2006 when his batchmates were promoted were not communicated to the applicant. At the same time, it is claimed that since the applicant belongs to Scientific/Technical category and is governed by a non vacancy basis on the Merit promotion scheme, he was to be promoted on the basis of merit of the work done and the achievements made during a given period from one grade to another higher grade in the same category as per the notified promotion

norms. The respondents further admitted that the applicant was graded A- for the period from 18.12.2002 to 31.07.2003 but later on his output and overall qualities in the following years were not upto the mark and as such he was graded B+ and B for the period from 01.08.2003 to 31.07.2007. The applicant had obtained the relevant information under RTI vide letter dated 10.12.2010 which reads as follows :-

“CR Gradings of Shri Rahul Sharma, Tech./C
Date of entry into BARC:18.12.2002

CRs for period	Gradings given	No. of years completed	Grading required in last 3 yrs (upto 2008) and in last 4 yrs. For 2009 onwards
18.12.2002 to 31.07.2003	A-	1	
01.08.2003 to 31.07.2004	B+	2	
01.08.2004 to 29.06.2005	B+	3	
01.08.2005 to 31.07.2006	B	4	A-3 yrs. (Not recommended)
01.08.2006 to 31.07.2007	B+	5	A-&B+ for last 3 yrs. (Not recommended)
01.08.2007 to 31.07.2008	A-	6	B+ for 3 yrs (Not recommended)
01.08.2008 to 30.06.2009	A-	7	B+ for 4 yrs.(Not recommended)
01.07.2009 to 31.03.2010	A-	8	B+for last 4 yrs. (Hence meeting the norms and putup for promotion w.e.f. 01.07.2010 and promoted as Tech/D.

In view of the above CR gradings, which does not comply with the requisite norms, the Screening Committee did not find him suitable for consideration of promotion.”

The perusal of the above clearly reflects that the applicant had got one A- and two B+ and one B grading during period 18.12.2002 to

31.07.2006, relevant for consideration for promotion as on 01.11.2006 when his batchmates were promoted. It is further observed that in the above referred information it is also mentioned that in view of the above CR gradings which does not comply with the requisite norms, the Screening Committee did not find him suitable for consideration of promotion. Therefore, it does not lie in the mouth of the respondents to claim that ACR gradings were not adverse to the applicant. These ACRs have adversely affected the applicant and if the same had been communicated to him, he would have been made aware of his performance and the assessment of his work and conduct by his superiors. This would have also given an opportunity to improve his work in future as well as to make any representation against the ACR if he felt that it was unjustified and could request for its upgradation. The respondents themselves have admitted in their reply that the output and over all qualities of the applicant during the subsequent years were not upto the mark and as a result he was graded B+ and B for the period from 01.08.2003 to

31.07.2007 and it is also claimed that the applicant had though applied for promotion to acquire additional qualification for B.Tech (Chemical) and again for Diploma in Electronics but he did not complete these courses which reflect his insincerity to his own cause. It is also claimed that in view of the OM dated 13.04.2010 (Exhibit R-3), there was no provision for communicating to the employees the below benchmark grading in the ACRs and that only the adverse remarks in the ACRs were required to be communicated. However the argument of the respondents is without any force in view of the judgment of Hon'ble Apex Court in the case of Dev Dutt (supra). The relevant paragraphs of this judgment are as under:-

"17. In our opinion, every entry in the A.C.R. of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways : (1) had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future (2) he would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi vs. Union of India, AIR 1978 SC 597 that arbitrariness violates Article 14 of the Constitution.

18. Thus it is not only when there is a bench mark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the

morale of the employee and make him work harder.

.....

22. It may be mentioned that communication of entries and giving opportunity to represent against them is particularly important on higher posts which are in a pyramidal structure where often the principle of elimination is followed in selection for promotion, and even a single entry can destroy the career of an officer which has otherwise been outstanding throughout. This often results in grave injustice and heart-burning, and may shatter the morale of many good officers who are superseded due to this arbitrariness, while officers of inferior merit may be promoted.

.....

36. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the annual confidential report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.

37. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.

.....

41. In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution.

Para 8 of the judgment of Hon'ble Apex Court in the case of Abhijit Ghosh Dastidar Vs. Union of India and Others reported in 2009 (16) SCC 146 reads as

under:-

8. Coming to the second aspect, that though the benchmark "very good" is required for being considered for promotion admittedly the entry of "good" was not communicated to the appellant. The entry of 'good' should have been communicated to him as he was having "very good" in the previous year. In those circumstances, in our opinion, non-communication of entries in the annual confidential report of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances of promotion or getting other benefits. Hence, such non-communication would be arbitrary and as such violative of Article 14 of the Constitution. The same view has been reiterated in the abovereferred decision (*Dev Datt case (supra)*) relied on by the appellant. Therefore, the entries "good" if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him.

In view of the above judgment in the case of Dev Dutt (supra), it is crystal clear that every entry in the ACR of a public servant must be communicated to him within a reasonable period as it would communicate the public servant the assessment of his work and conduct by his superiors so as to give him an opportunity to improve his performance in future. At the same time, he gets an opportunity to make a representation against the entry if he feels the same is unjustified and could seek for its upgradation. In the present case, the applicant received A- grading for the period 18.12.2002 to 31.07.2003 and thereafter he got two B+ and one B grading for the period 01.08.2003 to 31.07.2006 which

adversely affected him and for this reason he was not promoted to Technician Grade 'D' alongwith his batchmates as on 01.11.2006. Therefore, in the present case, non communication of the ACR gradings irrespective of the fact whether the same contained adverse remark or not is held to be arbitrary as if the same had been communicated to the applicant, he could be afforded an opportunity to make a representation against these gradings and also could have made improvement in his performance in future. However, at the same time, we are conscious of the fact that the applicant knew very well as on 01.11.2006 that his batchmates were promoted to the grade of Technician 'D' but he kept quite for a considerable long period and did not raise any objection. He willingly participated in the trade test and interview conducted by the Standing Selection Committee and on being promoted to the grade of Technician Grade 'D' w.e.f. 01.07.2010, he accepted the same without any objection. On 28.02.2011, for the first time he approached the respondents vide his representation challenging his non-promotion in the year 2006

that too after accepting his promotion w.e.f. 01.07.2010 to the Grade of Technician 'D'. He made this representation after lapse of around 5 years and that too after accepting his promotion to the Grade of Technician 'D' referred above without any objection. The Hon'ble Apex Court in the case of State of Uttarakhand Vs. Sri Shiv Charan Singh (*supra*) observed in para 20 of its judgment that anyone who sleeps over his right is bound to suffer which is fully applicable to the facts and circumstances of the present case . The applicant was well aware of the fact that his batchmates were promoted w.e.f. 01.11.2006 to the Grade Technician 'D' but he did not raise any objection or made any representation in this regard at the earliest opportunity available to him and too within reasonable time but he chose to sleep over the matter and woke up from deep slumber only on 28.02.2011 that too after accepting his promotion to the grade of Technician Grade 'D' w.e.f. 01.07.2010. Vide present OA, the applicant has challenged the impugned orders dated 10.10.2012 and 03.01.2013 whereby his representation dated 28.02.2011 and

his subsequent representations dated 16.03.2012, 01.10.2012 and 12.12.2012 on the same subject were dismissed. While challenging these impugned orders as contained in Annexure A-1 and A-2 the applicant has sought direction to the respondents to expunge adverse remarks and to upgrade all the ACRs/APARs gradings of the applicant for the period prior to 01.01.2006 and to treat the same as upto the required benchmark and to promote the applicant as Technician Grade 'D' w.e.f. 01.11.2006 with all consequential benefits.

17. However, as held by the Hon'ble Apex Court in the case of C. Jacob Vs Director of Geology and Mining and Anr. reported in 2008 (10) SCC 115 followed in the case of Union of India and Others Vs. M.K. Sarkar, reported in 2010 (2) SCC 59, the issue of limitation/delay and laches should be considered with reference to the original cause of action. The date of cause of action cannot rise like a phoenix. Similarly mere submission of representation to the Competent Authority does not arrest time.

18. The applicant was very well aware of the fact that his batchmates were promoted vide

order dated 01.11.2006 and that he was not considered for the promotion to the said post by the respondents. He could have approached this Tribunal to seek relief within a period of one year from 01.11.2006 in terms of Section 21 of the Administrative Tribunals Act, 1985.

19. We are unable to appreciate the stand taken by the applicant that the delay in filing the present OA was on account of filing the representations dated 16.03.2012, 01.10.2012 and 12.12.2012 and the orders of the respondents thereon dated 10/11.10.2012 and 03.01.2013, as it is settled proposition of law while considering the issue of limitation under Section 21 of the Administrative Tribunals Act, 1985, the crucial date for counting the period of limitation is the date on which the cause of action first arose and not when the employee submitted his representation for redressal of his grievance nor from the date of order passed by the concerned authority on such representation. Admittedly there is no time limit fixed for the employee to make a representation against the order by which he is aggrieved, though he is expected to file the

same for redressal of his grievance within a reasonable time, so that the authority can also take a decision thereon at the earliest. Hence in the present case, merely for the reason that the applicant filed representations on 16.03.2012, 01.10.2012 and 12.12.2012 and the same were disposed of vide orders dated 10/11.10.2012 and 03.01.2013, the present OA cannot be treated to be within the limitation in terms of Section 21 of the Administrative Tribunals Act, 1985.

20. Admittedly in the present case the cause of action arose as on 01.11.2006 and the applicant approached this Tribunal on 30.08.2013. i.e. around 7 years or so. Section 21 of the Administrative Tribunals Act, 1985 is set out herein below:-

Section 21 of the Administrative Tribunals Act, 1985 is set out herein below:-

"21. Limitation.-

(1) A Tribunal shall not admit an application,-

(a) in a case where a final order such as is mentioned in Clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in Clause (b) of sub-section (2) of Section 20 has

been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

Notwithstanding anything contained in sub-section (1), where-

- (a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and
- (b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in Clause (a), or, as the case may be, Clause (b), of sub-section (1) of within a period of six months from the said date, whichever period expires later.

Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in Clause (a) or Clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

21. As per Section 21 of the Administrative Tribunals Act, 1985, the period prescribed for filing OA is one year from the date of cause of action. In the present case, the period of one year was over as on 30.10.2007. The applicant thereafter as per the settled proposition of law was required to explain the delay of each and every day. However, he has failed to do so. He has not given the detailed reasons with dates on

account of which he was prevented from filing the OA within the period of limitation.

22. In the case of B. Madhuri Goud Vs. B. Damodar Reddy, 24 (2012) 12 SCC 693 the Hon'ble Apex Court has

culled out broadly the following principles to be taken into consideration while disposing of application for condonation of delay:-

21.1(i) *There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay for the Courts are not supposed to legalise injustice but are obliged to remove injustice.*

21.2(ii) *The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.*

21.3(iii) *Substantial justice being paramount and pivotal the technical considerations should not be give undue and uncalled for emphasis.*

21.4(iv) *No presumption can be attached to deliberate causation of delay but gross negligence on the part of the counsel or litigant is to be taken note of.*

21.5(v) *Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

21.6(vi) *It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

21.7(vii) *The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

21.8(viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one*

warrants strict approach whereas the second calls for a liberal delineation.

21.9(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the Courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

22.1(a) An application for condonation of delay should be drafted with careful concern and not in a half haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2(b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4(d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.

As per the principles referred to above, the concept of liberal approach while handling the application for condonation of delay has to encapsulate the conception of reasonableness and it cannot be allowed as a totally unfettered free play where there is inordinate delay, the doctrine of prejudice is attracted and it warrants strict approach whereas the delay of short duration or few days calls for a liberal delineation.

23. In the present case, the delay of around 7 years beyond the period of limitation can be termed as inordinate delay. Therefore, it was the duty of the applicant to explain this by showing sufficient cause which prevented him from filing the present OA within the period of limitation but he failed to do so. Hence, the applicant is not entitled to the reliefs claimed vide para 8(a) and 8(c) respectively.

24. With regard to the communication of adverse remark 2010-2011, his representation against this remark is rejected vide order dated 19.12.2011 and thereafter his appeal was also rejected vide order dated 20.02.2013. The applicant has further claimed following

in this regard:-

8(b) that this Hon'ble Court be pleased to quash and set aside the adverse remarks communicated 2010-2011 under letter dated 03.11.2011 (Annexure A-3) & reply dated 19/12/2011 (Annex A-4) rejecting the representation against said adverse remarks and appeal dated 20.02.2013 (Annex A-5).

8(d) That this Hon'ble Court be pleased to direct that the adverse material in the ACR/APAR of 2010-2011 be expunged and the grading for the said year be upgraded upto the bench mark required for being eligible for further promotion.

8(e) That this Hon'ble Court in pursuance of prayer clauses (a) and (d) (b) above direct the respondents to consider and promote the applicant to the post of Technician Grade F with effect from 01.07.2011 and grant the applicant all consequential service benefits including full back wages, pay fixation, seniority and all other admissible service benefits from the due date till date;

25. The learned counsel for applicant argued that the applicant was communicated APAR 2010-2011 on 03.11.2011 after the due date of promotion i.e. 01.07.2011 resulting in miscarriage of justice. Further since APAR consisted of adverse remarks, therefore he did not get sufficient time to make representation against the same and to make improvement in his performance. However, we do not find any substance in his said contention. The applicant was promoted to the Technician Grade 'D' w.e.f. 01.07.2010. As per promotion norms, the applicant could be due to next promotion to the Grade of Technician 'F' after completion of five years of his promotion to Grade of Technician 'D'. Trade

test is necessary for promotion to all grades upto Technician 'G' inclusive. The promotion norms are reproduced as follows:-

"PROMOTION NORMS FOR TECHNICIANS, SENIOR TECHNICIANS AND TECHNICAL SUPERVISORS

Guidelines for promotion:-

FROM GRADE	TO GRADE	MINIMUM ELIGIBILITY PERIOD IN YEARS
Tech A PB1 GP 1900	Tech B PB 1 GP 2000	3
Tech B PB1 GP 2000	Tech C PB 1 GP 2400	3
Tech C PB1 GP 2400	Tech D PB 1 GP 2800	3
Tech D PB1 GP 2800	Tech F/Asstt. Foreman PB 2 GP 4200	5
*Tradesman E PB2 GP 4200	Tech G PB 2 GP 4600	6
Tech F PB2 GP 4200	Tech G PB 2 GP 4600	4
Tech G PB2 GP 4600	Sr. Tech H PB 2 GP 4800	5
Sr. Tech H PB 2 GP 4800	Sr. Tech J PB2 GP5400	6
Sr. Tech J PB 2 GP 5400	Tech. Supervisor A PB 3 GP 6600	6
Tech Supervisor A PB3 GP 6600	Tech. Supervisor B PB GP 7600	7

Note:-

1. *Tradesman 'E' and Tradesman 'F' are merged. Tradesman 'E' are redesignated as Technician 'F1' w.e.f 1.1.2009. The promotion of those who were Tradesman 'E' prior to 1.1.2009 will be regulated as per the Table above.
2. Trade test is necessary for promotion to all grades upto Technician 'G' inclusive.
3. Regarding guidelines for promotion on acquiring additional qualifications, refer to para no.2.2.9

4. Full weightage should be given for the training period of 2 years for the first promotion after absorption in respect of those category II trainees, who are appointed in the grade of Tech.B only. (i.e. for promotion from Technician 'B' to Technician 'C')....."

In view of the above, the applicant could get promoted to Technician Grade 'F' only on or after 01.07.2015. Therefore delay of few months in communicating the APAR for the year 2010-2011 to the applicant is of no consequence. Moreover, he was already informed vide letter dated 03.01.2013 that since he was promoted to the post of Technician Grade 'D' only on 01.07.2010, subsequent promotion to the post of Technician 'F' also will be considered as per existing promotion norms. Accordingly the applicant was promoted to Technician Grade 'F' vide letter dated 01.07.2015 on completion of five years of his promotion to Technician Grade 'D' during the pendency of this OA.

26. In these circumstances, we do not find any infirmity in the impugned orders dated 03.11.2011 (Annex A-3) and 19.12.2011 (Annex A-4). Hence the Original Application is dismissed. No order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

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