

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 2487/2013

New Delhi, this the 5th day of November, 2019

**Hon'ble Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)**

S.C. Bhardwaj,
S/o late Sh. RL Bhardwaj,
R/o C/o Sh. Prem Dutt Pathak,
Q.No.B-41, 1st Floor,
Dilshad Colony, Delhi-110095

- Applicant

(By Advocate: Mr. Amit Kumar)

Versus

Union of India & Others through:

1. The Secretary,
Govt. of India in the
Department of Atomic Energy &
Ex-Officio Chairman of the
Atomic Energy Commission,
HQ-Anushakti Bhawan, CSM Marg,
Colaba, Mumbai-400001

2. The Director,
DCSE&M, VS Bhawan,
Anushakti Nagar,
Mumbai-400094

3. The Head GSS,
DCSE&M, VS Bhawan,
Anushakti Nagar,
Mumbai-400094 - Respondents

(By Advocate: Mr. Rajesh Katyal)

ORDER (ORAL)

Justice L. Narasimha Reddy:

The applicant joined the Department of Atomic Energy as Charge Hand in the year 1976. Thereafter, he was promoted to the

post of Scientific Officer in the year 2005. That post has since been redesignated as Scientist Grade 'D'. In the APAR of the applicant for the year 2010-11, he was graded as 'D', both by the reporting and reviewing authorities. Aggrieved by that, he made a representation to the competent authority. Through an order dated 19.09.2011, the competent authority upgraded the grading of the applicant from 'D' to 'C'. In terms of the verbal assessment, his gradation was upgraded from 'Not worth retaining in service' to 'Indifferent but just worth retaining'.

2. This OA is filed with the prayer to direct the respondents to upgrade the APAR of the applicant for the year 2010-11 and 2011-12 from gradation 'D' to 'A' and to extend him the benefit of promotion which was otherwise denied to him on account of the gradation of his APAR. The applicant contends that gradation of his APAR for several years was very high and it was only in the year 2010-11, that it was graded at the lowest. He further contends that this was on account of the fact that he made a complaint against some of the officers and they in turn inimical to him. It is also pleaded that the competent authority did not examine the matter objectively and the APAR is liable to be upgraded to the level of 'A'.

3. The respondents filed a detailed counter affidavit opposing the OA. It is stated that the gradation of the APAR of the applicant for the earlier years also was not consistently high and

on the other hand, it was sometimes up to the level of "B". They further submit that the APAR has only reflected the performance of the applicant and in the absence of any specific plea as to the malafide, the contention of the applicant cannot be accepted.

4. We heard Shri Amit Anand, learned counsel for the applicant and Shri Rajesh Katyal, learned counsel for the respondents.

5. The subject matter of this OA is the gradation of the APAR of the applicant for the year 2010-11. In the assessment undertaken by the respondents, there are five categories, namely, 1) X, 2) tendency to X, 3) Normal, 4) tendency to Y and 5) Y. For the year in question, all the attributes, the applicant was graded as 'Y'. The resultant gradation was 'D'.

6. Aggrieved by the gradation, the applicant made a representation to the competent authority. In all fairness to the applicant, the competent authority gave a right of hearing and interacted with the applicant. He called for remarks from the reporting and reviewing authorities and ultimately, passed the order dated 19.09.2011 which reads as under:-

"This has reference to Memorandum issued vide No.DCSE/Head GSS/2011/23 dated 28th July, 2011 to Shri Bhardwaj on the subject matter and his representation No.Nil dated 16.8.2011 on the same and the subsequent meeting Shri Bhardwaj had with Director, DCSEM alongwith Shri R.M. Jakate, Head, GSS and Shri A.S. Yadav on 5.9.2011. All adverse remarks in his ACR were brought to the notice of Shri Bhardwaj and he was requested to clarify whether he has any disagreement with the same. Shri

Bhardwaj during the meeting indicated that he agrees with the adverse remarks with a grading of 'D' i.e. Not worth retaining in service given by his superiors but pleaded ht he will try to deliver his best and a lenient view should be taken in view of his only two years of balance service left.

After weighing all pros and cons and paying to the heed to the request of Shri Bhardwaj, his grading has been upgraded from 'D' to 'C' i.e. Indifferent but just worth retaining.

Shri Bhardwaj in his own interest is requested to improve upon his performance, otherwise further action as deemed fit will be initiated."

7. For some reason or the other, the applicant did not choose to challenge the order. As long as the order remains, there is no way that the applicant can have any further grievance. The competent authority has upgraded the APAR of the applicant from 'D' to 'C' and even the gradation in words were changed to the advantage of the applicant.

8. Though the applicant made an attempt to mention that his APAR of the earlier years were consistently ranked high and that the downgradation was only on account of a representation made by him, the record does not support his contention. A perusal of the APAR of the applicant for the earlier years discloses that in the year 2003, he was graded as low as 'B'. In certain years, it was Grade A-2 or A-3. Further, the applicant did not implead the officer who is said to have acted against him. In the absence of such a step, it becomes difficult for the Tribunal to verify the

correctness or otherwise of the plea as to the malafide or partiality.

9. Reliance is placed upon the judgment of the Hon'ble Supreme Court in **Dev Dutt Vs. Union of India & Ors**, (2008) 8 SCC 725. That was a case in which the Hon'ble Supreme Court directed that any below benchmark APAR must be communicated to the employee so that he can make a representation. The applicant was communicated the APAR immediately.

10. Reliance is also placed by the applicant on the judgment of the Delhi High Court in **Charanjit Lal Khatri Vs. Secretary General, Rajya Sabha Secretariat** in LPA No.39/2012 decided on 21.12.2012. That was a case in which challenge was to the order of compulsory retirement. Incidentally the assessment of APAR of the applicant was also discussed. However, we do not find any specific parameters in the context of upgradation of the APAR.

11. Recently this Tribunal had an occasion to deal with the question pertaining to upgradation of the APARs in OA No. 4102/2013 in **S.C. Sagar Vs. Union of India & Ors**. The judgments of the Hon'ble Delhi High Court in **Charanjit Lal Khatri**'s case (supra) and **State Bank of India Vs. Mohd. Mynuddin** (1987)4 SCC 486 were referred to. It was held therein that the Tribunal cannot sit as an appellate authority over the gradation of the APAR made by various authorities, much less

the one given by the competent authority. The applicant is not able to demonstrate that he has been victimized by any particular officer, or his APARs were otherwise of high ranking.

12. We do not find any merit in the OA. It is accordingly dismissed. There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L.Narasimha Reddy)
Chairman

/lg/