

(2022) 02 CAT CK 0022

In the Central Administrative Tribunal

Case No : Original Application No. 330, 00067 Of 2019

H.N. Choudhary

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 16-02-2022

Acts Referred:

Citation : (2022) 02 CAT CK 0022

Hon'ble Judges : Tarun Shridhar, Member (A); Pratima K Gupta, Member J

Bench : Division Bench

Advocate : Ashish Kumar, Anil Kumar, P.K. Rai, S.M. Mishra

Final Decision : Disposed Of

Judgement

Tarun Shridhar, Member (A)

1. We have joined this Division Bench online through video conferencing.
2. Shri Anil Kumar, learned counsel for the applicant and Shri Dharmendra Tiwari holding brief of Shri P.K. Rai, learned for the respondents are present.
3. The applicant is aggrieved by denial of promotion to Non Functional Selection Grade (NFSG).
4. Brief facts of the case are that the applicant in his Annual Performance Appraisal Report (APAR) of the year 2013 - 14 was graded as 'Good'. This particular grading stood in the way of the applicant to meet the benchmark stipulated for promotion to NFSG. To this effect, he seeks the following reliefs, which is being quoted verbatim:-
(i) That impugned order 16.10.2017 passed by respondent NO.2 rejecting applicant's representation dated 29.8.2017 for

upgradation as time barred may be quashed and set aside by this Honâ??ble Tribunal (Annexure A-1 of compilation 1 to the present application).

(ii) That the Honâ??ble Tribunal may be pleased to direct the respondents to consider the representation of the applicant in view of the facts of the case and upgrade the APAR of the applicant for the year 2013-14 from â??Goodâ?? to â??Very Goodâ??.

(iii) That the Honâ??ble Tribunal may be pleased to direct the respondents to consider the APARs of the applicant for promotion to Non

Functional Selection Grade as per the old benchmark system prior to 15.12.2015 and 1.9.2017 for the APARs written before 2015 for the

purpose of applicantâ??s promotion to the SAG (Senior Administrative Grade) against the dynamic Assured Career Progression (DACP)

and grant further all consequential benefit from the due dates.

(iv) Any other order which this Honâ??ble Tribunal deems fit in the light of the facts and circumstances of the present applicationâ??.

5. Learned counsel for the applicant draws our attention to his OA, particularly para 4.6 wherein he has given a table of the assessment/ grading of

the applicant in the APARs during different years. He points out that right from the year 2012â?"13 to the year 2017â?"18, the applicant has been

graded as either â??Outstandingâ?? or â??Very Goodâ?? except for this single entry for the year 2013-14 which grades him as â??Goodâ??.

Learned counsel points out that this single entry obviously is an aberration as otherwise the track record of the applicant as assessed by his superior

and supervisory officers is either â??Very Goodâ?? or â??Outstandingâ??.

Therefore, denial of promotion to Non Functional Selection Grade

(NFSG) merely on the basis of a single entry, which is recorded with rest of his performance, is unjustified and discriminatory. He further points out

that vide circular dated 15.12.2015 (Annexure A-6), the respondents have retrospectively changed the benchmark for the promotion to NFSG.

Quoting from the judgment rendered by the Bangalore Bench of this Tribunal on 20.1.2017 in OA No. 727 of 2016, learned counsel informs that the

Tribunal in the aforesaid OA had clearly held that the benchmark by way of administrative instructions could not have been changed retrospectively

and at the most its applicability could only have been prospective. Hence, the

Tribunal had held that denial of promotion to the applicant is in that OA on the basis of retrospective application of the circular was bad in law.

6. Learned counsel for the applicant further submits that the applicant had already preferred a representation to the competent authority qua his APAR for the year 2013-14 but the same was rejected merely on a technical ground that it was not submitted within the stipulated time as contained in the instructions governing the subject. The said instructions provide for a representation against the entry in APAR within 15 days from the date of receipt of the APAR. While rejecting the representation of the applicant, the competent authority had recorded that since the APAR was acknowledged by the applicant and no representation was made thereafter, it is presumed that he is satisfied with the entry. The applicant had made the representation after a lapse of three years hence the competent authority rejected the same. Learned counsel submits that he seeks a direction to the respondents to decide his representation on merits rather than on technical grounds.

7. Shri Dharmendra Tiwari holding brief of Shri P.K. Rai, learned counsel for the respondents points out that there is no infirmity in the order of the respondents rejecting the representation of the applicant as the authorities have strictly adhered to the rules governing the subject. The representation preferred by the applicant is way beyond the period of limitation and have not liable to be considered, the learned counsel adds.

8. We have heard learned counsel for the parties and also gone through the documents on record. No doubt there is a provision in the extent rules to deal with representations qua the entries in the APAR. The disclosure of APAR is made to the employees which have to either accept or question the same. In the absence of any representation with respect to the entries, it is presumed that the applicant has accepted the grading/assessment awarded to him. However, we are also conscious of the fact that in this case the grading which has come in the way of the applicant is not an adverse grading.

He has been graded as 'Good'. Although 'Good' is a positive grading, it is now standing in the way of the applicant when it comes to promotion to NFSG. We can also not fail to note that barring this single entry, all his other entries are either 'Outstanding' or 'Very Good', therefore, we are agreeable with the contention of the learned counsel

for the applicant that one single entry is an aberration and is not in harmony with the overall record of the applicant. In our opinion, there is a good enough reason for a direction to the respondents to review this assessment strictly on its merits rather than dismissing it on a technical ground of being time barred.

9. Therefore, it would be the fitness of things to dispose of this OA with a direction to the respondents to:-

(a) Decide the representation of the applicant afresh with respect to the grading in his Annual Performance Appraisal Report (APAR) for the year

2013-14 on merits and

(b) Take a decision on the plea of the applicant that the circular dated 15.12.2015 should not be applied retrospectively especially since the Bangalore

Bench of this Tribunal has given a categorical finding on this issue in OA NO. 727 of 2016 disposed of on 20.1.2017.

(c) While taking a decision on these two issues and representations of the applicant, the respondents shall also treat this OA along with its annexures

as a supplementary representation. Needless to say that the respondents will take an expeditious decision in the matter, certainly not later than 08

weeks from the date of this order.

10. With the aforesaid directions, the OA is disposed of. No order as to costs.