

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

OA No.290/00131/2016

Pronounced on: 22.02.2020
(Reserved on: 27.01.2020)

...

CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE SMT. ARCHANA NIGAM, MEMBER (A)

...

Amar Singh Goyal, s/o Shri Laxman Singh, aged 52 years, working as Accounts Officer, BSNL, Office of Telecom, District Manager, Sirohi (Raj.), r/o Kevli Valo ke Gali, Village & PO Nana Tehsil Bali, District Pali.

...APPLICANT

BY ADVOCATE : Mr. O.P. Sharma.

VERSUS

1. Bharat Sanchar Nigam Ltd., through Chairman and Managing Director, BSNL Corporate Office, Bharat Sanchar Bhawan, Janpath, New Delhi-1.
2. Chief General Manager, Rajasthan Telecom Circle, Bharat Sanchar Nigam Ltd., Sardar Patel Marg, Jaipur.
3. Shri Sarwan Kumar, General Manager, Telecom District, BSNL, Sirohi now at Udaipur.
4. The Telecom District Manager, Bharat Sanchar Nigam Ltd., Sirohi.
5. Sri Madhu Sudan Sharma, Chief Accounts Officer, O/o the General Manager, Telecom District Sirohi, now BSNL, Ajmer.

RESPONDENTS

BY ADVOCATE: Ms. Kausar Parveen, for R1 to R5

ORDER

...

Hon'ble Smt. Archana Nigam, Member (A):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant is seeking the following reliefs:

- "(i) That the impugned order dated 27.10.2015 of CGMT Jaipur (Annexure A3) adverse entries zero grading of APAR for the year 2013-14 may be declared illegal, tainted with malice of respondents no.3 & 5 and the same may be quashed and the applicant may be allowed consequential benefits including the treating the grading 'Very Good' of applicant for the year 2013-14 as very good for all purposes.*
- (ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of the case in the interest of justice.*
- (iii) That the costs of the application may be awarded."*

2. The brief facts of the present case as narrated by the applicant are that the applicant was selected as TS Clerk on 03.01.1981 under the Department of Telecommunication, and thereafter, he was promoted as Assistant Accounts Officer with effect from 01.10.1998; further, he was promoted as Accounts Officer on 08.10.2008. The applicant states that he has unblemished service record & never exhibited misconduct in his performance. The applicant has reasons to believe that right from year 1981 since appointment to the promotion as Accounts Officer on 08.10.2008, his service records/APAR are very good/good. But the APAR/ACR for the year 2013-14 is an exception which has been down-graded and declared zero by the reporting officer.

3. However to the utter surprise of applicant, in the APAR 2013-14, his actual positional appraisal has resulted into adverse reporting in the APAR

2013-14; Applicant has been awarded zero grading. (Marks below 04 are counted as nil and zero and 3.5% are equivalent zero, as contained in the format of APAR)

The critical analysis of part 4, General: By reporting officer reveals that:

1. Relations with Public . Average
2. Training: To improve the effectiveness and capabilities of the officer, he needs training in HR as well as financial and accounts field
3. Integrity . Beyond doubt.
4. Pen picture by reporting officer overall qualities of the officer including area of strength and lesser strength, extra ordinary achievements significant failures (Rev 3A, 3B for Part 2) and attitude towards weaker sections . 100 marks.
The officer is having average capabilities resulting desired output is not achieved. He always depends on his subordinates as well as his supervisors, because of his attitude and the average capabilities, the liquidation (TR) targets could not be achieved.
5. Overall . numerical grading: 3.53 . [equal to zero as per page 9/9 (vi) policy decision of Rule frames]

Part 5 . the remarks of reviewing officer as under:

Column 2 . Agreed . Yes

Column 3 . Left Blank

(4) Pen picture by Reviewing Officer (in about 100 words)

Fully agree with remarks of reporting officer, the officer is having average capabilities. The officer could not achieve TR liquidation target while he had been provided with supporting staff, PC including vehicles also.+

5 . Marks . 3.53 . signed

4. The applicant had time and again brought to the notice of the critical facts for better recovery results but the reporting officer the CAO & IFA, could not get all the short falls managed/overcome . definitely non-availability of a JAO . immediate subordinate causes great hardships and difficulties in working especially in the month of Jan to March which is known as targeted months for recovery of old revenue when JAO proceeded leave,

substitute arrangement should have been made. New Computer, Printer and one TOA could have been diverted for this very important work of recovery at least for the month of Jan to March, 2014.

5. It is the case of the applicant that the controversy regarding the shortfalls that prevailed as agreed by the reporting officer and reviewing officer should have been qualified by adding steps taken for supply of pc and manpower; However, no mention is made of these issues by reporting officer.

6. A detailed representation was preferred by the applicant to the chief general manager, Rajasthan telecom circle on 27.08.2014. wherein it is stated that the reporting and reviewing officer have been totally unmindful of his own duties and responsibilities while recording the remarks in the APAR, he reiterates that zero grading awarded is completely non-sustainable as these are not based on any material which could have formed the basis of the assessment made by these officers the JAO, the applicant's immediate subordinate and the CAO the immediate superior both are graded very good in the APAR of 2013-14 including reviewing officer i.e. the GM Telecom Distt. Sirohi based on the achievement of the same revenue targets

7. In the written statement filed on behalf of the respondents, it has been stated that the performance of the applicant was never excellent. Most of the time, the work and conduct of the applicant was not proper & resulting suitable entry was made in the MOS of the applicant during 1997. Also due to his discourteous and arrogant attitude towards his colleagues, a suitable note of these instances was ordered to be recorded in his ACR/APAR for the period 2001-02 vide letter dated 22.03.2002. In addition to that the

applicant had also misbehaved with his controlling officer i.e. Chief Accounts Officer, office of the GMTD, Sirohi on 31.03.2014 for which his explanation was called upon vide DO letter dated 01.04.2014 but he refused to receive it.

8. The grading awarded in APAR/ACR of the applicant for the year 2013-14 is totally just and proper. During the year 2013-14, the applicant was given full opportunity to improve his work performance, conduct and behaviour but the applicant neither performed properly nor improved his conduct and behaviour despite of repeated directions given to him as a result of which target fixed by the circle office was affected badly. However, the target as fixed was achieved, through junior officers and staff under direction of CAO & GMTD, Sirohi and with help of special team of circle office, Jaipur.

9. It is further stated that the A.O. (TR Recovery) is in charge of recovery team and had been provided a full team of JAO and Sr. TOA along with vehicle and all infrastructure like computer etc. As per the job profile of A.O. (TR Recovery), he has to carry out all the works related to recovery by fully involving himself and with the help of his team. It was found that while working as A.O. (TR Recovery) most of the time, the applicant was fully dependent upon his subordinates as well as on his superiors and could not discharge his duties properly.

10. For his poor performance as well as regarding carelessness in discharge of tasks assigned to him and also for the act of non-subordination, he was issued various letters including do letter during financial year 2013-14 by reporting and reviewing officer i.e. CAO and GMTD, Sirohi. All guidelines and support had been provided by the CAO

and GMTD, Sirohi, but the applicant always neglected the directions of his superiors resulting target fixed by circle office not being achieved. The applicant has tried to divert his responsibility on his superiors.

11. For the act of insubordination with reporting officer by the applicant, his explanation was called by the CAO (reporting officer) vide DO letter dated 18.03.2014 under intimation to Sr. GM (Finance) office of CGMT, Jaipur and GMTD, Sirohi. This clearly proves that the applicant was neither serious about the job assigned to him nor about his work and conduct.

12. The Chief General Manager, Rajasthan Telecom Circle is fully competent to decide the representation against the grading awarded by the Reviewing Authority. After examining the representation of the applicant and comments and grading given by Reporting and Reviewing Officer, the Chief General Manager, Rajasthan Telecom Circle had rejected the representation of the applicant. The grading in the APAR of the applicant for the year 2013-14 has been awarded by Reporting and Reviewing Officer on the basis of overall performance work and conduct of the applicant which is totally just and proper. Therefore, the respondents prayed that the OA filed by the applicant be dismissed.

13. In the rejoinder filed on behalf of the applicant, it has been reiterated that the mention of entry of 1997 in year 2013, 2014 is totally vague, irrelevant, and establishes bias and malice in attitude. Applicant is working sincerely with full dedication and devotion on the same work seat for last three years, his work and conduct adjudged "very good" in all these years. The DO letter dated 01.04.2014 is cooked up one to make a basis of adverse entry out of bias as in self appraisal of APAR 2014 the shortage of computer, man power etc were

mentioned which facts has caused irritation and both the Officer became malicious.

14. It is further stated that highlighting the fact resulted in a biased attitude and resulted in the writing of DO letter dated 01.04.2014 to the applicant grading zero marks (less than 4 marks are treated equal to zero). All efforts were made by CAO & GMT to conceal the facts and suppress the self appraisal short fall pointed out by the applicant.

15. Applicant has concluded that the officer has not written APAR with due diligence in the true spirit of Article 51-A (J) as required under the rules and no opportunity or hearing was given to the applicant before awarding zero grading. The applicant's performance on record establishes 'very good' in all previous reports, The zero grading is totally wrong and on whims of the officer's only. The zero grading is based in purely on extraneous considerations, very inaccurate remarks are recorded to demoralize the applicant and also to withheld his promotion which is due on 01.10.2014. The zero grading is against objectivity, impartiality and fair assessment and adverse is recorded with prejudiced attitude and demoralized the applicant despite his best performance as reflected in entire Rajasthan Telecom Circle and in Sirohi SSA. The Reporting and Reviewing Officers both were accorded 'Very Good' entry in the APAR with the same achievements of the applicant for 2013-14. Therefore, on this basis only their action is erroneous, wrong and unsustainable. Therefore, the applicant prayed that the OA be allowed being well founded, true, accurate and bonafide.

16. Heard Shri O.P. Sharma, learned counsel for the applicant and Smt. Kausar Parveen, learned counsel for respondents no.1 to 5 and perused the pleadings available on record.

17. We have anxiously examined the case with the help of the arguments advanced by both the Learned Counsels. The case of the applicant is that the grading of 3.5 (or effectively a grading of zero) in his APAR for the year 2013 -2014 is unjustified and had been done out of malice to harm the applicants career profile. He claims that the adverse remarks were false and passed with a prejudiced and biased mind.

Pen picture by reporting officer overall qualities of the officer including area of strength and lesser strength, extra ordinary achievements significant failures is adverse as below:

"The officer is having average capabilities resulting desired output is not achieved. He always depends on his subordinates as well as his supervisors, because of his attitude and the average capabilities, the liquidation (TR) targets could not be achieved."

18. The case of the applicant is that he is being victimized for having brought to the notice of the superior officer the shortfall in achievement of targets and he has also highlighted that they were problems in infrastructure non-availability of proper manpower and non-availability of computer system etc. He has also vehemently submitted during hearing that there was no support forthcoming from field staff particularly during the critical revenue collection months of January to March of the year under review. In his submissions, the applicant has also alleged that the reporting and reviewing officer have been totally unmindful of his own duties and responsibilities while recording remarks in the APAR as adverse leading to grading of 3.5 (equivalent to zero) as per rules.

19. Per contra, in the written statement filed on behalf of the respondents mentioned that the performance of the applicant was never excellent contrary to the claims made by him. They have also drawn

our attention to the discourteous and arrogant misbehavior of the applicant for which considerable note was issued and ordered to be recorded earlier in his APAR for the period 2001-2002 vide letter dated 22.03.2002. In addition to that the applicant had also misbehaved with his controlling officer i.e. Chief Accounts Officer, office of the GMTD, Sirohi on 31.03.2014 for which his explanation was called upon vide DO letter dated 01.04.2014 but he refused to receive it. The grading awarded in APAR/ACR of the applicant for the year 2013-14 is totally just and proper. During the year 2013-14, the applicant was given full opportunity to improve his work performance, conduct and behaviour but the applicant neither performed properly nor improved his conduct and behaviour despite of repeated directions given to him as a result of which target fixed by the circle office was affected badly. However, the target as fixed was achieved, through junior officers and staff under direction of CAO & GMTD, Sirohi and with help of special team of circle office, Jaipur.

20. It is the case of the respondents that the applicant has been misleading by his submission. In fact, he has been advised, and warned on many occasions for his poor performance as alleged lack of due diligence in his work. Despite these advise and directions of his reporting and reviewing officer the applicant has been unmindful of these and instead is in the habit of diverting the responsibility for his poor performance on his superiors. It has also been clarified by the respondents that there has been no significant shortage either in the support staff or in the provision of computer systems etc.

21. As per the respondents the grading in the APAR for the financial year 2013-2014 has been given by the reporting and reviewing officer

only on the basis of overall performance, conduct and behaviour of the applicant.

22. In order to be able to adjudicate on the matter of the grading in APAR as raised by the applicant in this OA it is worthwhile to review the guidelines issued by the DOPT for the preparation of the APAR, which is reproduced below

Performance assessment should be used as a tool for career planning and training, rather than a mere judgmental exercise. Reporting Authorities should realize that the objective is to develop an officer so that he/she realizes his/her true potential. It is not meant to be a fault finding process but a developmental tool. The Reporting Authority, and the Reviewing Authority should not shy away from reporting shortcomings in performance, attitudes or overall personality of the officer reported upon.

23. It is clear from the above that performance assessment is expected to be a tool for career planning and training rather than a judgmental exercise. The purpose of the reporting is to develop the full potential of an officer/official reported upon. The reporting authority and reviewing authority should not shy away from reporting shortcoming in performance, attitude or overall personality of the officer reported upon.

24. Towards maximizing performance guidelines stipulate that all officers are required to develop a work plan for the year and agree upon the same with the reporting officer. Admittedly, a performance report in respect of Telephone revenue for the month of March, 2014, in respect of the applicant's District was accepted by the applicant himself and has in fact been detailed at para 9 in his own submissions. It would appear therefore that the respondent cannot be found faulted with respect to compliance with the guidelines in this aspect. As per the guidelines, the performance appraisal must be with reference to the achievements of employees viz-a-viz the agreed work plan. It is seen

from the pen picture in the APAR that the evaluation by the reporting officer is very much with reference to the shortfall in liquidation targets on account of poor performance of the applicant. This again is strictly as per the procedure laid down in the guidelines.

25. As additional safe guard, the DOPT has also stringent provisions that adverse reporting must be communicated to the applicant.

26. In the judgment of Sukhdeo V. Commissioner Amravati Division (SCC Para 6), (1996) SCC (L&S) 1141, Hon'ble the Supreme Court pointed that:

"6.....when an officer makes the remarks he must eschew making vague remarks causing jeopardy to the service of the subordinate officer. He must bestow careful attention to collect all correct and truthful information and give necessary particulars when he seeks to make adverse remarks against the subordinate officer whose career prospect and service were in jeopardy. In this case, the controlling officer has not used due diligence in making remarks. It is would be salutary that the controlling officer before writing adverse remarks would give prior sufficient opportunity in writing by informing him of the deficiency he noticed for improvement. In spite of the opportunity given if the officer/employee does not improve then it would be an obvious fact and would form material basis in support of the adverse remarks. It should also be mentioned that he had been given prior opportunity in writing for improvement and yet was not availed of so that it would form part of the record." (emphasis supplied)."

It would be worthwhile to examine whether these directions of the Apex Court has been complied with in the case of the applicant Shri Amar Singh Goyal. Documents have been submitted by the respondents in regard at Annexure-03, it is seen from these that the applicant has been repeatedly counseled/advised/warned in writing to improve both his performance and behaviour. In the order dated 22.03.2002, applicant has been reprimanded by the GMT Sirohi, for his discourteous and arrogant attitude and directed to avoid such behaviour in future.

27. As stated by the respondents, the applicant was given full opportunity to improve his work performance, conduct and behaviour but the applicant neither performed properly nor improved his conduct and behaviour despite of repeated directions given to him as a result of which target fixed by the circle office was affected badly.

28. It is also clear from the Records that the grading given has been based upon recorded performance as per quantified targets and not on some vague assessment Appraisal. The Pen picture recorded by the Reporting officer is based purely on the inability of the officer reported upon to achieve the Liquidation targets because of Average capabilities and negative attitude.

29. From all the above, it is quite evident that the respondent department cannot be faulted in compliance with the guidelines and policies of the Govt. of India with regard to the preparation and writing of APARs. We, therefore, are of the opinion that no interference is called for in the action taken by the respondent department is warranted.

30. Accordingly, the relief sought by the applicant in the OA is not maintainable and the OA is therefore deserves to be dismissed and is dismissed. There shall be no order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

//sv//