Central Administrative Tribunal
Principal Bench

O.A. No. 678/2016

This the 14th day of January, 2020

Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Pradeep Kumar, Member (A)

Shri V V Krishna Sarma, aged 55 years
S/o Sri V.Rama Murty,
Administrative Officer,
Song & Drama Division,
Ministry of Information & Broadcasting,
9th Floor, Soochna Bhawan
CGO Complex, Lodhi Road,
New Delhi - 110003

... Applicant

(By Advocate: Sh. Vinay Gautam for Ms. V. Deepti)

VERSUS

1. Union of India,
Through the Secretary,
Ministry of Information & Broadcasting,
'A' Wing, Shastri Bhawan,
New Delhi-110 001.

2. Director,
Song & Drama Division,
Ministry of Information & Broadcasting,
9th Floor, Soochna Bhawan
CGO Complex, Lodhi Road,
New Delhi – 110 003.

... Respondents

(By Advocate: Dr. Ch. Shamsuddin Khan)

ORDER (Oral)

Hon'ble Mr. Pradeep Kumar, Member (A):

The applicant, herein, was posted at Lucknow office and is aggrieved that his APAR for the financial

year 2014-15 was neither written by the Reporting Officer nor was it reviewed by the Reviewing Officer. Applicant has preferred the instant OA seeking direction to respondents to issue a certificate that APAR for the financial year 2014-15 is not available and place it in his service record so as to avoid any problem in his future service.

2. It is seen from the counter affidavit by respondents that there were two Reporting Officers, namely, Sh. Dhruva Awasthy and Smt. B. Pal Chowdhury. Sh. Dhruva Awasthy was posted at HQr at Delhi and looked after the additional charge of Regional Office, Lucknow for the period from 01.04.2014 to 04.09.2014 and he did not write any APAR for the applicant for this period. The subsequent Reporting Officer Smt. B. Pal Chowdhury has also not reported anything in the APAR. The Reviewing Officer has also not written anything in the APAR.

3. On the last date of hearing, i.e., on 07.01.2020, learned counsel for respondents sought one week's time to take instructions as to why 'non-availability certificate' cannot be issued when APAR was not written to startwith.

4. Learned counsel for the respondents was present in the court, however, he mentioned that no instructions have been received and accordingly, no arguments were put forth in respect of the query raised by the court on the last date of hearing.

As directed on last date, the OA was taken up for adjudication based upon the pleadings available on the file.

5. The respondents' counsel drew attention to certain specific paras of their counter reply vide para nos. 4.5, 4.6, 4.7 and 4.8, which are reproduced as under:-

> *"4.5 xxx xxx xxx*
>
> *It is submitted that the fact is that the then Director had taken a decision against the Applicant that he can not be advisably permitted to deal with financial matters so long as the Criminal case is pending on the charge of misappropriation of Government Property. The applicant denied to obey the order of competent authority and had filed a OA No. 1765/2014 in the Hon'ble CAT (PB), New Delhi, which was dismissed by this Hon'ble Tribunal vide its order dt. 29.08.2016 and imposed a cost of Rs. 25000/- with the directions not to give powers as Drawing & Disbursing Officer. The Secretary, Information & Broadcasting directed to look into this matter and take a view (Annexure R-2). The applicant was creating hurdles/ obstacles in releasing funds from the Regional Office to carry out the special programme activities in the field, for which this Division is meant for, although there was clear cut orders and sanction of the competent authority. Therefore, Shri Dhruva Awasthy, the then Deputy Director, Lucknow being the superior authority of the*

applicant, directed the applicant to release the amount of campaign.

xxx xxx xxx

4.6 xxx xxx xxx

It is submitted that it is fact that the Applicant represented to place a non availability certificate in his APAR. In this regard it may be mentioned that a Central Government employee cannot decide which Officer would write their APAR. The officer under whom he/she has been working has a right to report upon APARs. If the Government servant is aggrieved with the remarks of the officers reported upon he or she has the opportunity of making representation to be examined by the competent authority. The same was communicated to the Applicant vide letter no. C-28022/21/2015 dated 20.04.2015.

xxx xxx xxx

4.7 xxx xxx xxx

It is submitted that the Applicant vide letter dt. 29.04.2015 had submitted his APAR for the period 01.04.2014 to 04.09.2014 for the remarks of Reporting Officer. Shri Dhruv Avasthy, being the Reporting officer and Head of Office of Song and Drama Division, Lucknow has reported upon that the Applicant has never worked under in his jurisdiction, neither a single tour has undertaken under him nor any leave application were submitted by the applicant. Hence, the Reporting office,. Shri Dhruv Avasthy denied evaluating or giving any comments on his performance. And due to administrative reason, it could not be sent for review as the Review Officer was already left the Division during August, 2014.

4.8 xxx xxx xxx

However, it is not applicable in this case as the Reporting officer has taken a conscious decision for not writing the Applicant's APAR for the period as mentioned by the Applicant. This shows that the Applicant has never treated Sh. Dhruv Avasthy as his Controlling Officer which is highly objectionable. He had not taken any tour approval from him. This indicates misconduct and disobedience on the part of the Applicant."

6. Matter has been heard at length. Sh. Vinay Gautam, appeared as proxy to Ms. V. Deepti, learned counsel for the applicant. Dr. Ch. Shamsuddin Khan, learned counsel appeared on behalf of the respondents.

7. Various issues raised by the applicant as well as the averments in the counter reply by the respondents have been considered.

8. What has been brought out by the respondents (para 5 supra) indicates that the applicant, at the relevant point of time, had not carried out certain instructions as given to him by his superiors. He appears to be a person who litigates a lot and has filed many OAs in the Tribunal. While all or some of these allegations may be true, this does not absolve the Department from evaluating his work in the year. Accordingly, whatever be the assessment of his performance in the year 2014-15, same is required to be written and finalised by writing his APAR.

9. The limited issue in the present OA is that the APAR for the financial year 2014-15 was not written either by the Reporting Officer or by the Reviewing Officer. The respondents in their averment as stated in para 4.7 of their counter reply, have also noted that APAR could not be written because of certain reasons.

In view of the foregoing, this Tribunal does not find it appropriate that 'non availability certificate' for the said year should also not be given to the applicant.

10. In view of the foregoing, the OA is disposed of by directing the respondents to issue the 'non-availability certificate' for the APAR 2014-15 to the applicant and place a copy of the same in the service record under advice to the applicant. This exercise be completed within a period of eight weeks from the date of receipt of a certified copy of this order. No order as to costs.

(Pradeep Kumar)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

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