

**CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH..**

**Original Application No.195/2015**

Date of Reserve:19.02.2020

Date of Pronouncement :05.06.2020

CORAM:

**Hon'ble Shri M.C.Verma, Member (J)**

Shri Raju Ahuja, S/o Asardar Ahuja,  
Aged 52 years,  
Commissioner (AR) CESTAT,  
Residing at:D/5, SatyaTriveni Apartments,  
Opposite Karnavati Club,  
Ahmedabad – 380 007.

**... Applicant**

**By Advocate :Shri N. S.Kariel**

**Versus**

1. Union of India,  
Notice to be served through:  
The Secretary, Department of Revenue,  
Ministry of Finance, North Block,  
New Delhi – 110 001.
2. The Chairman,  
The Central Board of Excise & Customs,  
North Block, New Delhi – 110 001.
3. The Chief Commissioner,  
Customs, Gujarat Zone,  
Customs House, Nr. All India Radio,  
Navrangpura, Ahmedabad-380 009.

**... Respondents**

**By Advocate :Ms. R. R. Patel**

**ORDER**

**[PER M.C.VERMA [MEMBER(J)]**

1. Being aggrieved by APAR Assessment of him of period 2009-10 & 2010-11 applicant has preferred instant O.A. having prayer for undermentioned relief:-

*“(A)Be pleased to allow this present application.*

**(B)** *Be pleased to adjudge and declare that the decision of the Referral Board qua the present applicant conveyed vide Minutes of Meeting dated 12.11.2014 being F.No. 8/B/198/HRD (HRM)/ APAR/2014 (Annexure A-1) is arbitrary, illegal and passed without any application of mind.*

**(C)** *Be pleased to quash and set aside the decision of the Referral Board qua the present applicant conveyed vide Minutes of Meeting dated 12.11.2014 being F.No.8/B/198/HRD(HRM)/APAR/2014 (Annexure A-1).*

**(D)** *Be pleased to direct the Respondent Authorities to consider the APAR Assessment of the Reporting Officer as Final Assessment in relation to the APARs of the period 2009-10 and 2010-11 Part-I (01.04.2010 – 25.10.2011), and in consequence of the aforesaid be pleased to direct the Respondent Authorities to issue appropriate Certificate in relation to the Reviewing Officer having forfeited his right to enter any remarks in the APARs for the period 2009-10 and 2010-11 Part-I (01.04.2010 – 25.10.2010).*

**(E)** *Be pleased to direct the Respondent Authorities to issue appropriate certificate that the Assessment Year 2010-2011 Part-II (31.12.2010 – 31.03.2011) be treated as a No Report Period.*

**(F)** *Be pleased to pass any further order or directions as the Hon'ble Tribunal may deem fit in the interest of justice."*

2. The case of the applicant as has been set out in his O.A. is that he presently is serving as Commissioner (AR) CESTAT and during the period of the APAR's in question i.e. in period 2009-10 he was manning the post of Commissioner, Service. Tax, Ahmadabad and in 2010-11 was working as Commissioner, Central Excise, Ahmedabad. That the DoP&T Office Memorandum No.21011/02/2009-Estt (A) dated 16<sup>th</sup> February, 2009 (Annex.A-2), laid down the time limit for completion of APAR by the reporting officer as well by reviewing officer and said date respectively are 30<sup>th</sup> June of concerned year for reporting officer and 31<sup>st</sup> July by reviewing authority.

2.1 That as per APAR procedure applicant had filled-up Self-Appraisal portion of the period 2009-10 forwarded it to the authority concern on 28.04.2010. That reporting officer recorded his observation in his APAR on 30.06.2010. That reviewing authority had to complete his assessment before 31.07.2010 but, as transpired later on, reviewing authority completed review of his APAR on 25.11.2011, meant to say after expiry of time limit for completion of APAR.

2.2 That APAR for the period of 2010-2011 has been bifurcated into two spells. First spell consists of period from 01.04.2010 to 25.10.2010 and the second spell consists of period from 31.12.2010 to 31.3.2011. That so far

first spell is concerned, the applicant pleaded that he has duly filled-up his Self Appraisal by 15.04.2011 and reporting officer recorded his observation in his APAR on 30.06.2011. That reviewing authority had to complete his assessment before 31.07.2011 but reviewing authority completed review of his this APAR on 25.11.2011. That in his APAR of second spell of period from 01.04.2010 to 25.10.2010 reporting officer recorded his observation on 29.07.2011 and reviewing authority completed review of his APAR on 24.11.2011.

2.3 That APAR Assessment by Reviewing Authority for year 2009-10 and both spell of year 2010-11 as well APAR Assessment by Reporting Authority for second spell of year 2010-11 has been recorded after expiry of time limit for completion of APAR in violation of DoP&T Office Memorandum No.21011/02/2009-Estt (A) dated 16<sup>th</sup> February, 2009 (Annex.A-2).

2.4 Applicant had pleaded further that he showing his grievance that reviewing authority has graded his APAR beyond time limit and that reporting authority also, for second spell of year 2010-11 has recorded assessment after expiry of time limit, preferred representations, dated 07.03.2012 and 29.2.2012 but vide communication dated 25.11.2014 he was intimated that Referral Board, met on 12.11.2014, has hold that the gradations given in the APAR were just, fair and reasonable. Being aggrieved by the decision of the Referral Board, the applicant has approached this Tribunal by filing this O.A.

3. Contesting the matter respondents' have filed reply and inter alia they have pleaded that once assessment had been made by the reporting and reviewing officer, even though the APAR had been initiated by the reporting officer or reviewing officer after due date, it is not tenable to trip the comments of reporting officer or reviewing officer as non existing for the reason of endorsing of assessment comment after due date. That as reporting officer & reviewing officer had already furnished their remarks under the relevant column and the same, in view of clarification issued by

DoP&T vide F.No. 21011/1/2014 Estt.(A) dated 29.09.2014 (Annex. R-1) cannot be treated as non-existing. It has been pleaded in reply that DoP&T Clarification F. No. 21011/1/2014 Estt.(A) dated 29.09.2014 (Annex.R-1) was issued relating to the case of another officer, namely Ghasi Ram and in that case though the reporting authority had reported beyond the time limit prescribed, it has been decided that once the reporting has been done, 'No Report Period' cannot be recorded for such period. That grading given by reporting and reviewing officers always based on the observations of the work done by the officer during the reporting period. Thus, applicant cannot request for granting him higher grade than what has been awarded to him nor struck off on the ground of being late submission. That decision of the Referral Board is right and proper. In view of this, the O.A. is devoid of merits.

4. Applicant has filed rejoinder to the reply and did place DoP&T Office Memorandum dated 16.02.2009 (pertaining to one another officer namely, Priyesh Bheda) wherein the order is that reporting and reviewing officers have forfeited their right to record remark in APAR upon crossing the cut off date. He pleaded that once the forfeiture has come into effect, the reporting and reviewing officers cannot write anything and in such circumstances, there is no question of accepting any remarks in the ACR/APAR. He further submits that even otherwise, the Note, Annex. R/1, relied upon by the Department cannot be said to be a clarification, as has been claimed by respondents, since the same appears to be issued by J.S. without approval of the Department or approval of the Secretary/Minister concerned and at the most it can be construed as the report prepared by individual officer and not by the Department.

5. Have heard the counsel representing adversary parties. Learned counsel, Shri N.S. Kerial, Advocate, appearing for applicant submitted that it is not disputed that reviewing authority completed review of APAR of the period 2009-10 after expiry of time limit for completion of APAR as well of both spells of APAR of the period 2010-11 {first spell consists of period

from 01.04.2010 to 25.10.2010 and the second spell consists of period from 31.12.2010 to 31.03.2011} and that reporting officer, qua second spell of APAR recorded his observation after expiry, he gave the date when reporting officer & reviewing officers recorded their remarks of APAR of the applicant and added that DoP&T Office Memorandum No.21011/02/2009-Estt (A) dated 16<sup>th</sup> February, 2009 (Annex.R-2) prescribes mandatory cut of date.

6. Mr. Kerialrelying upon the DoP&T Office Memorandum dated 16.02.2009 urged that reporting and reviewing officers forfeited their right upon crossing the cut off date and once the forfeiture has come into effect, the reporting and reviewing officer cannot write anything and in such circumstances, there is no question of accepting any remarks in the ACR/APAR. He is assailing Annex. R/1 relied upon by the respondents as clarification of Office Memorandum dated 16.02.2009, contended that it cannot be said clarification of DoP&T Office Memorandum dated 16.02.2009 because it is issued by J.S. without approval of the Department or approval of the Secretary/Minister concerned, which construed that report has been prepared by individual officer and not by the Department. He also invited attention of undersigned to this Note which has been placed on record by respondents as Annex. R/1 and also invited my attention to Annex. A/12 wherein Ministry of Finance Vide F.No.28212/26/2010-EC/Per dated 24.07.2012 in case of one Priyesh Bheda, the Referral Board took the view that grading by the reporting & reviewing officers are not made within prescribed timeline, should be ignored and the period be treated as "No Report Period". He also referred the impugned order and concluded that main grievances of the applicant was that grading by the reporting & reviewing officer are not made within prescribed timeline and grading not made within prescribed timeline should be ignored but Referral Board has not even discussed this contention. He urged to allow the O.A. and grant the relief prayed therein.

7. Ms. R.R.Patel, learned counsel appearing on behalf of the respondents at threshold submitted that in similar case, though the reporting authority has made grading beyond the time limit prescribed, it has been decided that once the reporting has been done, 'No Report Period' can be recorded for such period. In support of her argument she placed reliance on Annex. R/1 and added that in instant case reporting & reviewing officers have already furnished their remarks under the relevant column, they were rightly taken as part of APAR as it may not be tenable to treat the comments as non-existing. She further submitted that grading given by the reporting and reviewing officer always based on the observations of the work done by the officer during the reporting period thus what has been awarded to him cannot struck off on the ground of being late submission. She further submits that Referral Board was comprising of three senior officers of the Department, have independently and fairly assessed the appeal of the applicant and thus the decision of the Referral Board is right and proper. In view of this, the O.A. is devoid of merits and the same shall be rejected with costs.

8. Have heard the learned counsel, representing the adversary parties, considered the submissions made at Bar and perused the record. The applicant has contended that the decision of the Referral Board is arbitrary, illegal and that Reporting Officer's Assessment in relation to the APARs of the period 2009-10 and 2010-11 Part-I (01.04.2010–25.10.2010) had to be treated as final because Reviewing Officer had forfeited his right to enter any remarks and that the Assessment Year 2010-2011 Part-II (31.12.2010–31.03.2011) had to be treated as a 'No Report Period'.

9. The OM. No. 21011/02/2009-Estt.(A) dated the 16th February, 2009 (Annexure A-3) of Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training provides for the need to complete the Annual Confidential Reports of all classes of employees in time and have direction to ensure that ACRs are completed in time, it prescribe a time limit after which the Reporting/Reviewing Officer

shall forfeit his right to record the ACR. It is stipulated therein that in case the ACR is not initiated by the Reporting Officer for any reason beyond 30<sup>th</sup> June of the year in which the financial year ended, he shall forfeit his right to enter any remarks in the ACR of the Officer to be reported upon and he shall submit all ACRs held by him for reporting to the Reviewing Officer on the next working day. Similarly, the Reviewing Officer shall also forfeit his right to enter any remarks in the ACR beyond 31<sup>st</sup> August of the year in which the financial year ended. Para 3 of the O.M.reads :-*“3. In case the remarks of the Reporting officer or Reviewing Officer as the case may be have not been entered in the ACR due to the concerned officer forfeiting his right to make any entry as per the provision in para 2 above, a certificate to this effect shall be added in his ACR for the relevant period. In case both the Reporting officer and Reviewing officer had forfeited their rights to enter any remarks, the CR format with the self appraisal given by the officer to be reported upon will be placed in his ACR dossier.”*

10. The schedule of dates, as is enclosed with the O.M.is in table, re-produced below:-

**TIME SCHEDULE FOR PREPARATION OF CONFIDENTIAL REPORTS**

S. No.	Nature of Action	Date by which to be completed
1.	Distribution of blank CR forms to 31SI March. all concerned (i.e., to officer to be (This may be completed even a reported upon where self-appraisal week earlier). has to be given and to reporting officers where self-appraisal is not to be given)	31 <sup>st</sup> March. (This may be completed even a reported upon where self-appraisal week earlier).
2.	Submission of self-appraisal to 15m April. reporting officer by officer to be reported upon (where applicable)	15 <sup>th</sup> April
3.	Submission of report by reporting officer to reviewing officer - Where self-appraisal by officer reported upon is th May. prescribed. - Where self-appraisal by officer reported upon is not 21st April. prescribed. - Where officer reported upon is himself a reporting officer 22nd May. for subordinates under him.	7 <sup>th</sup> May  21 <sup>st</sup> May  22 <sup>nd</sup> May
4.	Report to be completed by Reviewing Officer and sent to Administration or CR Section/Cell.	<ul style="list-style-type: none"><li>• 23rd May where the due date for the reporting officer is 7th May.</li><li>• 7th May where the due</li></ul>

		date for the reporting officer is 21st April. • 5 th June where the due date for the reporting officer is 22nd May
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11. Inthe said O.M.under the caption “Important Notices-“ it has been mentioned *(i) The Reporting Officer is requested to complete the ACRs as per the schedule above. The Reporting Officer shall have no right to enter any remarks in the CRs after 30<sup>th</sup> June following the annual reporting period & (ii) Reviewing Officer is also requested to complete the review of the ACRs as per the schedule above. The Reviewing Officer shall have no right to enter any remarks in the CRs after 31<sup>st</sup>August following the annual reporting period.*

12. From bare reading of the O.M., it is obvious that the only intent for issuance of this O.M. is to ensure that ACRs must be completed in timeline provided and after expiry of stipulated time the Reporting/Reviewing Officer shall forfeit his right to record the ACR and APAR of that period would be dealt according to Para 3 of the O.M., quoted above.

13. Respondents’ have tried to built up the case that once assessment had been made by the reporting and reviewing officer, even though the APAR had been initiated by the reporting officer or reviewing officer after due date it is not tenable to trip the comments of reporting officer or reviewing officer as non existing for the reason of endorsing of assessment comment after due date but said contention, if is accepted would be contrary to the very purpose behind issuance of the O.M. and in fact, would render the O.M. as redundant.

14. Learned counsel Ms. Patel has also contended that O.M. has been clarified by the DoP&T and it is obvious from the clarification that even if comments were made by Reporting Officer or Reviewing Officer after due date, same cannot be wiped of. She referred Annex. R-1as Clarificationof



the O.M. I minutely had appraisal of said Annex.R/1 and for sake of brevity the same is reproduced, verbatim, herein under :-

*“Anneuxre R-1”*

*“ F. No. 21011/1/2014 – Estt. (A)  
Department of Personnel and Training (Estt.A-II)*

*Reference : Note on prepage of BRDB regarding representation of Shri Ghasi Ram, Chief Engineer (C ) in respect of his APAR for the period 03.12.2012 to 31.03.2013 reported beyond the due date of prescribed time limit by the reporting officer. (Dy. No.103336/CR/14).*

*2. Matter has been examined and it is intimated that for forfeiture of reporting/reviewing officer's rights after the prescribed dates, the administrative concerned may draw a no-report certificate and only the self appraisal of the report has to be taken on records as per OM No.21011/02/2009 –Estt. (A) dated 16<sup>th</sup> February, 2009. However, once that has not been done and comments of the reporting/ reviewing officer has been recorded, the NRC cannot be recorded for the period.*

*This issues with the approval of JS(E).*

*-sd-*

*(Prem Chand)  
Under Secretary (Estt.A) Desk-II”*

15. Annex.-R-1 was issued relating to the case of another officer, namely Shri Ghasi Ram and in that case though the reporting authority had reported beyond the time limit prescribed, it has been decided that once the reporting has been done, 'No Report Period' can be recorded for such period. From its perusal, it is evident that it has been issued with the approval of JS(E) and therefore cannot be said to be a clarification related to policy as no approval of Government /Ministry appears to be there.

Further, respondents have also placed one order on record which reveals that in case of officer Priyesh Bheda Referral Board observed that the grading not made by the reporting and reviewing officer within the stipulated timeline, should be ignored ab initio. Said order has been placed at Annex. A/12 and for sake of brevity is also reproduced, verbatim, herein under:-

*“Annexure A-12”*

*“ F. No.28012/26/2010-EC/Per  
Government of India,  
Ministry of Finance  
Department of Revenue  
North Block, New Delhi*

Dated the 24<sup>th</sup> July, 2012

**NO REPORT CERTIFICATE**

( FOR THE YEAR 2010-11)

The ACR for the year 2010-11 in respect of Shri Priyesh Bheda, Assistant Commissioner may be treated as No Report Period as the Referral Board has observed that the grading made by the Reporting and Reviewing Officer were not made within the stipulated timeline and should be ignored ab initio. The Referral Board also observed that the aforesaid report period viz. 01.04.2010 - 31.03.2011 may, therefore, be treated as ‘No Report Period’. Hence, the year 2010-11 may be treated as ‘No Report Period’.

-sd-  
Santosh Kumar  
Section Officer (Per/EC)”

16. Impugned order is suffering from inherent material infirmity also. APAR details of applicant, year-wise is illustrated by table below:-

Sr.No.	Period	Reporting Officer & period	Grading & date of grading	Reviewing Officer & period	Grading & date of grading
1	2009-2010	Ajit Kumar Chief Commissioner 1.4.2009 to 31.3.2010	8.5 ((30.6.2010)	S DuttMajumdar 18.8.2009 to 31.3.2010	8 (25.11.2011)
2	2010-2011	(i) Ajit Kumar Chief Commissioner 1.4.2010 to 25.10.2010  (ii) SmtLipikaMajumdar Roy Choudhury, Chief Commissioner of Central Excise, Ahmedabad Zone. 31.12.2010 to 31.3.2011	9.3 (30.6.2011)  7.34 (29.7.2011)	S DuttMajumdar 1.4.2010 to 31.3.2011	8.50 (09.11.2011)  7.34 (24.11.2011)

Impugned order indicates that one of the main contention of applicant was that the O.M. No. 21011/02/2009-Estt.(A) dated the 16<sup>th</sup> February,2009prescribe a time-limit after which the Reporting/Reviewing Officer shall forfeit his right to record the ACR and that the grading made by the Reporting and Reviewing Officer were not within the stipulated timeline and should be ignored but there is no discussion, muchless any finding to answer this issue in the Order of the Referral Board.

16. In view of legal and factual scenario, discussed above and taking note of entirety, order of the Referral Board vide Minutes of Meeting dated 12.11.2014 (Annex.-A/1) is quashed and is set aside and Respondent

Authorities are directed to consider the APAR Assessment of the Reporting Officer as Final Assessment in relation to the APARs for the period 2009-10 as well APARs for 2010-11 Part-I (period 01.04.2010 – 25.10.2010) and to issue appropriate certificate for the Assessment Year 2010-11 Part-II (Period 31.12.2010-31.03.2011) as 'No Report Period'.

17. With the above direction, the O.A. stands allowed. No order as to costs.

(M.C.Verma)

Member (J)

jrm



