

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 291/94/2020
with
MISC. APPLICATION NO. 291/210/2020

Order reserved on 22.09.2021

DATE OF ORDER: 05.10.2021

CORAM

HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER

Naveen Tomar son of late Ranbir Singh Tomar, aged around 57 years, Resident of Hathi Barkala Estate, Dehra-dun (Uttarakhand) 248001 presently working as Additional Surveyor General, Survey of India, Specialized Zone, Dehra-dun (Uttarakhand). (Group 'A' Post), Mob. 9412125910.

....Applicant

Shri Amit Mathur, counsel for applicant.

VERSUS

1. The Union of India through its Secretary, Ministry of Science and Technology, Department of Science and Technology, Technology Bhawan, New Maharoli Road, New Delhi-110001.
2. The Union Public Service Commission through its Chairman, Dholpur House, Shahjahan Road, New Delhi-110069.
3. The Surveyor General of India, Survey of India, Post Box No. 37, Hathi Barkala Estate, Dehra-dun (Uttarakhand) – 248001.

.... Respondents

Shri Anand Sharma, counsel for respondent Nos. 1 & 3.
Shri D.C. Sharma, counsel for respondent No. 2.

ORDER**Per: Hina P. Shah, Judicial Member**

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

"It is, therefore, prayed that the present original application made by the applicant may kindly be allowed. The pen pictures recorded in the APAR of the year 2015-16 may be "expunged" or declared null and void. The order dated 05.05.2017 may further be quashed and set aside. The applicant may be declared fit for promotion to the post of Surveyor General of India. The respondents may be directed to again consider the case of applicant for promotion to the post of Surveyor General of India ignoring the pen pictures of 2015-16. Further they may be directed to give promotion to the applicant on the post of Surveyor General of India.

Any other relief or direction which this Hon'ble tribunal deems fit in the facts and circumstances of the case may also be passed in favour of applicant.

Cost of application may also be granted to the humble applicant. "

2. The brief facts of the case, as stated by the applicant, are that he is presently working as Additional Surveyor General of India. In the year 2015-16 when he was posted as Additional Surveyor General of India, Western Region, Jaipur, the

reporting officer awarded seven numerical grading to the Applicant in his APAR of 2015-16. The said reporting officer in his pen picture commented as under:-

“an intelligent and technically sound officer. Despite his capabilities, he limits himself to duties assigned and never exhibited initiative. He is in the habit of availing leave frequently”.

The said reporting officer, Dr. S. Subba Rao, Surveyor General of India (SOI) was facing CBI enquiry. Though he has not supervised the work of the applicant, he has written the APAR of the applicant in January 2017. The numerical grading given to the applicant by Dr. S. Subba Rao was seven, as such his APAR was “very good”. Dr. S. Subba Rao was restrained by CBI from visiting any office of Survey of India from 01.05.2015 to 07.04.2016. Thus Dr. Rao was not at all aware of the performance of the Applicant. Before writing pen picture, no communication was forwarded to the Applicant informing that he lacks the ability to take initiative or that he frequently proceeds on leave. Applicant submitted representation against the pen picture recorded in his APAR. However the same was not considered and the same was rejected by a non-

speaking order only on the ground that the remark entered by the reporting officer was approved by the accepting authority. Thereafter, the case of the Applicant was considered for promotion on the post of Surveyor General of India as the Applicant was the only eligible candidate for the said post. The DPC in its meeting held on 20.11.2019 did not find the Applicant fit for promotion to the post of Surveyor General of India due to comments entered by the reporting officer in the pen pictures of the Applicant. It is only because of the numerical grading of 7.0 given to the Applicant in his pen picture for the year 2015-16. Thus, it is clear that the Applicant is found unfit by the screening committee merely on the ground of comments entered in pen pictures that "despite his capabilities, he limits himself to duties assigned and never exhibited initiative. He is in habit of availing leave frequently." Therefore, being aggrieved by the pen pictures in the APAR of 2015-16, Applicant has approached this Tribunal that he be promoted to the post of Surveyor General of India by ignoring the pen pictures of 2015-16.

3. a) The respondent Nos. 1 & 3 filed their reply and stated that the Applicant joined Survey of India as Dy.

Superintending Surveyor (Group 'A') on 02.04.1985 and promoted to the post of Addl. Surveyor General of India on 70.01.2014 which is a feeder grade for promotion to the post of Surveyor General of India. On superannuation of Lt. Gen Girish Kumar, VSM Surveyor General of India w.e.f. 31.12.2019, only the Applicant was eligible for consideration for promotion to the post of Surveyor General of India w.e.f. 01.01.2020 in which his APAR of preceding 05 years from the vacancy year 2020 were required to be considered by the DPC.

b) On this issue, it is submitted that prior to the year 2016-17, the APAR of Survey of India Group 'A' Officers were written for the period of July to June. As per DOPT OM dated 16.02.2009, the time limit for submission of self-appraisal to Reporting Officer by Officer to be reported upon was 15th April. In spite of this, the Applicant submitted his APAR for the year 2015-16 (from 01-07-2015 to 30-06-2016) to the then Surveyor General of India vide his letter dated 18.07.2016, to which Dr. Swarna Subba Rao, the Surveyor General of India has given his remarks. The Reviewing Officer i.e. Secretary, Department of Science & Technology had agreed with the assessment

made by the Reporting Officer. On receipt of APAR, Applicant submitted his representation dated 16.03.2017 only against the remarks entered by the Reporting Officer in the pen picture of APAR for the year 2015-16. In the said representation, the Applicant did not mention that Dr. Rao was not authorized to initiate his APAR for the year 2015-16. The said representation was perused by the Reviewing Officer (Secretary, DST), but rejected the appeal of the Applicant for expunging the remarks vide DOPT OM dated 05th May 2017. The said decision of the competent authority was conveyed to the Applicant vide order dated 05th May 2017.

c) Thereafter, Applicant had made a representation to expedite the DPC vide letter dated 24th June 2019. The name of the Applicant was considered for promotion to the post of Surveyor General of India by the DPC held in UPSC on 20.11.2019 against the vacancy year 2020 and he was assessed as 'unfit' for promotion on the basis of assessment of his APARs of preceding 05 years. The Applicant thereafter submitted another representation dated 07.01.2020 to expunge unjustified adverse entries made by Dr. Swarna Subba Rao and to convene a Review DPC for

promotion to the post of SGI. The said representation was considered by the DST vide letter dated 3rd June 2020 in the light of provisions of DOPT OM dated 30.01.1978, that no memorial or appeal against the rejection of the representation against adverse entries should be allowed six months after rejection. The Applicant had submitted his representation after almost two and a half years from the date of rejection of his first representation dated 16.03.2017.

d) After superannuation of Lt. Gen Girish Kumar, VSM, Surveyor General of India w.e.f. 31.12.2019, no officer except the Applicant in the grade of Addl. Surveyor General of India was available, therefore, the competent authority had assigned the current duty Addl. Charge of Surveyor General of India with curtailed powers only for day to day functioning for 3 months or till further orders whichever is earlier to the Applicant vide order dated 31st December 2019. Thereafter, the competent authority with the approval of the Appointment Committee of Cabinet (ACC) reappointed Lt. Gen Girish Kumar, VSM, Retd. to the post of Surveyor General of India for a period of one year vide order dated 15th January 2020 on contract basis. Thus, as the action of the respondent Nos. 1 &

3 is just and proper and in accordance with the relevant rules and instructions, the O.A. filed by applicant has no merit and the same deserves to be dismissed.

4. Respondent No. 2, UPSC, also filed a separate reply stating that UPSC is an advisory body set up under Article 315 of the Constitution of India and have a Constitutional obligation to ensure that all selections made for regular appointments to the services/posts of the Union of India are made strictly in accordance with statutory recruitment rules and instructions issued by the Govt. of India from time to time. The Applicant was considered for promotion to the post of Surveyor General of India by the DPC held in the Commission on 20.11.2019 for the vacancy year 2020. The consideration matrix of the said DPC for vacancy year 2020 is 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18. The said DPC took a conscious decision to assess the APAR of the Applicant for the year 2015-16 as "Good" only. The Applicant was, therefore, assessed as "unfit" for promotion to the post of Surveyor General of India for the vacancy year 2020 as he failed to secure 5 bench mark grading of "very good". Thus, aggrieved by the action and

orders of the respondents, the applicant has filed the present Original Application.

5. The applicant has filed a rejoinder denying the contentions of the respondents and has stated that he submitted his APAR for the year 2015-16 to Surveyor General of India and not to Dr. Swarna Subba Rao. The pen picture by Dr. Rao is not sustainable and the same was contrary to the performance of the Applicant. It is further submitted that for the year 2015-16, the reporting period for APARs followed in Survey of India was from 01.07.2015 to 30.06.2016. Accordingly, the time limit of submission of self-appraisal was 15.07.2016. The Applicant submitted the duly filled APAR well in time to the office i.e. on 04.07.2016 and, thus, it was the duty of the Surveyor General office and the officer initiating the APAR to seek who was the Surveyor General of India during period under report or entitled to initiate the APAR. The respondent No. 1 i.e. the Secretary too has been casual in reviewing the APAR. The period of leave availed by him that of earned or medical leave does not prove that he is habitually taking leave. In Applicant's case, DPC has considered the adverse remarks entered in the pen picture of the APAR for the

year 2015-16 by the person who was not authorized as he had not seen the performance of the Applicant at least three months as well as the same has been made after the prescribed period as provided in Rule 5 of APAR Rules, 2007. Therefore, the applicant prays that the O.A. filed by him be allowed.

6. We have heard learned counsels for the parties at length and examined the pleadings brought on record.

7. The applicant besides reiterating his submissions further added that the Reporting Officer was restrained by CBI from entering in the office of Survey of India or entering in contact with the employee of Survey of India, therefore, Dr. S. Subba Rao could not have written the pen pictures of the applicant as Reporting Officer. The Reporting Officer has in a mechanical manner made entries in the service record as he has nowhere assessed the performance of the Applicant. No reasoning has been given by the Reporting Officer to come to a conclusion over the grading of the Applicant as the pen pictures have to be corroborated from overall grading. The Applicant had remained on leave and on every occasion, the said leave was sanctioned and that he is not a habitual

absentee. The assessment made by the Committee for promotion on the post of Surveyor General of India was not in accordance with law. Also the Committee did not look at the overall record of the Applicant before arriving at any conclusion as it was required to look into the complete service record. Thus, as the pen pictures in the APAR of 2015-16 were in violation to the O.M. issued by DOPT dated 28.05.1972 and 16.02.2009, the said pen pictures should not have been taken into consideration. Thus, the pen pictures recorded in the APAR of the year 2015-16 may be "expunged" or declared null and void and that the Applicant be again considered for promotion to the post of Surveyor General of India.

8. The respondents reiterated their stand and stated that their action was in consonance with the rules. They further stated that the applicant had nowhere mentioned in his representation that Dr. S. Subba Rao the then Surveyor General of India was not authorized to initiate his APAR for the year 2015-16. It seems that the applicant was satisfied with numerical grading '07' by both Reporting and Reviewing Officer and pen picture written by Reviewing Officer. The applicant has raised the issue of APAR after more than 02 years of

delay by challenging the order dated 05.05.2017, without giving any proper justification for delay. The Hon'ble Apex Court in the case of D.C.S. Negi vs. Union of India held that the "Tribunal is duty bound to first consider whether the application is within limitation and the application may be admitted only if the same is found to have been within limitation and for any justifiable reason for extending the period of limitation". Respondents state that the Reporting Officer is the best judge to assess the work of the officer and there is no reason to override the remarks entered in the APAR by the Reporting Officer. The provisions of OM dated 16.02.2009 are applicable in the case where period of APAR ends on 31st March but prior to the year 2016-17, the APAR of SOI Gr. 'A' Officers were written for the period from July to June and the period of APAR for the year 2015-16 of the Applicant is of 01.07.2015 to 30.06.2016 and he has submitted his appraisal vide letter dated 18.07.2016. Respondents further state that the Applicant had submitted representation dated 70.01.2020 to Secretary, DST on the same grounds of relief which he had sought vide OA No. 94/2020 filed by him on 27.01.2020 which the Applicant has suppressed in the

present OA. With regard to the point regarding adherence to the prescribed time schedule for writing APAR is irrelevant at the stage after a time period of 3 years when Applicant wants his pen pictures to be expunged. As the action of the Respondents is just, proper and in accordance with the relevant rules and instructions, therefore O.A. of the applicant has no merit and liable to be dismissed.

9. After hearing the parties and perusing the pleadings, before coming to the facts of the case, we would like to deal with the plea of limitation raised by the respondents. In the present case, applicant has filed a Misc. Application No. 210/2020 for condonation of delay in filing the O.A., stating that though the representation was rejected by the respondents in May, 2017, however, he challenged the same by filing the present O.A. and there is a delay of almost 21 months as he has challenged the order dated 05.05.2017, but he was declared unfit by the DPC for promotion in February 2020 and as the delay is bonafide, the same needs to be condoned as there is no malafide intention. On the other hand, respondents by their reply stated that as per S. No. 2 of DOPT OM No. 21011/02/2009-Estt(A) dated 16th February 2009

which stipulates time limit for “submission of self appraisal to Reporting Officer by Officer to be reported upon as 15th April” (in cases where reporting year is upto 31st March). In spite of knowing these facts, the Applicant submitted his APAR for the year 2015-16 vide his letter dated 18th July 2016 to the Surveyor General of India. Thus, the Applicant has raised the issue of APAR after more than 2 years of delay by challenging the order dated 05.05.2017 without giving any proper justification for delay. Hence, the O.A. is liable to be dismissed on this ground itself. We cannot overlook the fact that the applicant being a Group ‘A’ officer is himself responsible for the delay and he ought not to have delayed submission of his self appraisal report and it is clear that no convincing reason has been given by the Applicant for the delay to be condoned.

10. On merits, we have seen that the Applicant while posted as Addl. Surveyor General of India, Western Region, Jaipur, the reporting officer awarded seven numerical grading to the Applicant in the APAR of 2015-16. The said reporting officer mentioned in pen picture that “an intelligent and technically sound officer. Despite his capabilities, he limits himself to

duties assigned and never exhibited initiative. He is in the habit of availing leave frequently". Applicant submitted representation dated 16.03.2017 only against the remarks entered by the Reporting Officer in the pen pictures of APAR for the year 2015-16. In his entire representation, he has not raised any malafide against the Reporting Officer. Also the Applicant has nowhere mentioned in his representation that Dr. Swarna Subba Rao, the then Surveyor of India was not authorized to initiate his APAR for the year 2015-16. In fact, he has tried to explain reason for his taking leave on several occasions and also that he had insufficient staff and with small manpower he has tried to do the best to complete his duties. Thus, it is clear that the Applicant may be satisfied by his numerical grading 07 by both the Reporting as well as Reviewing Officer.

11. As per DOPT OM No. 21011/1/2005-Estt. (A) Pt.II dated 14th May 2009, the representation of the officer was perused by the Reviewing Officer (Secretary, DST) but rejected the Appeal of the Applicant for expunging the remarks vide DST Order No. SM/01/02/2017 (part) dated 5th May 2017, which are as under:-

- “(i) Sh. Tomar had availed earned leave and medical leave 8 times in the reporting period which justifies the comments of the reporting officer.
- (ii) Regarding the remarks ‘lack of initiative’, the Reporting officer is the best judge to assess the work of the officer and I found no reason to override the remarks entered in the APAR by the Reporting Officer.”

As seen, thereafter there was no communication till the DPC was held. The name of the Applicant was considered for promotion to the post of Surveyor General of India by the DPC held in UPSC on 20.11.2019 against the vacancy for the year 2020 and assessed him unfit for promotion on the basis of assessment of his APARs of preceding 5 years. The DPC, in para 7.3 of the Minutes of Meeting held on 20.11.2019 held as under: -

“The committee in due consideration of the negative pen picture as recorded by the Reporting Officer in the APAR for the year 2015-16 in respect of Shri Naveen Tomar, observed that the remarks of the Reporting Officer as stated above indicate severe shortcomings in the professional attributes of the Officer. These remarks of the Reporting Officer have been duly upheld by the competent authority. The Committee was therefore of the view that the remarks of the Reporting Officer, as recorded in the pen picture of the APAR of the Officer for 2015-16, indicate lack of certain essential professional attributes which are sine qua non for due discharge of the higher responsibilities attendant to the post of Surveyor General of India, for which the Officer is being considered

for promotion, where the Officer would be required to function at one of the highest decision making levels. Furthermore, the comments of the Reporting Officer do not reflect the presence of initiative, which is a prerequisite for the post. Such remarks do not justify an overall assessment of "Very Good". Keeping in view of the above factors, the committee took a considered decision to assess the APAR for the year 2015-16 in respect of Shri Naveen Tomar as "Good".

12. Thereafter, the applicant gave another representation dated 07.01.2020 to expunge the adverse entries as well as to convene a Review DPC for promotion to the post of Surveyor General of India. The said representation was considered by the DST vide his letter No. SM/01/04/2019 dated 3rd June 2020 and has observed that as per provisions of DP&AR OM No. 21011/7/77-Estt. dated 30.01.1978, no memorial or appeal against the rejection of the representation against adverse entries should be allowed six months after rejection. As seen, the Applicant has submitted his representation after almost two and a half years from the date of his first representation dated 16.03.2017.

13. We have also observed that after the superannuation of Lt. Gen Girish Kumar, VSM, Surveyor General of India w.e.f. 31.12.2019, no

officer except the Applicant in the grade of Addl. Surveyor General of India was available and, therefore, the competent authority had assigned the additional charge of the Surveyor General of India for 3 months or till further orders whichever is earlier. Thereafter, with the approval of the Appointment Committee of the Cabinet (ACC), Lt. Gen Girish Kumar, VSM (Retd) was re-appointed to the post of Surveyor General of India for a period of one year on contract basis.

14. Thus, we have observed that nowhere the procedure has been violated nor there was any question of malafides raised in the representation of the Applicant. Therefore, we opine that as the scope of Judicial Review is very limited and while exercising the powers of judicial review, the Courts have to see that arbitrarily any officer should not be punished because of malafides of the Reporting Officer or Reviewing Officer. Since there are no allegation of malafides (except averments which are only raised in the present O.A.) against either the Reporting Officer/Reviewing Officer, thus, no judicial review is justified as held by the Hon'ble High Court of Madhya Pradesh in the case of **P. Bhargava vs. Union of**

India & Ors., [W.P. (S) No. 3950 of 2006], decided on March 23, 2007, reported in [2007 (3) MPLJ 150]. The same view was earlier taken by the Hon'be Apex Court in the case of **State of Orissa & Others vs. Jugal Kishore Khatua**, reported in 1997 Supreme Court Cases (L&S) 1768. Thus, it is clear that the action of respondents is proper, just and legal and the impugned order deserves no interference.

15. In the light of the observations made herein above, we, therefore, have no hesitation to observe that the present Original Application deserves to be dismissed on limitation as well as on merits. Accordingly, the Original Application as well as Misc. Application No. 291/210/2020 for condonation of delay are dismissed with no order as to costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

/nlk/