

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
(CIRCUIT AT PORT BLAIR)

LIBRARY

O.A. 351/00626/2018

Date of order: 5.1.2021

Present : Hon'ble Ms Bidisha Banerjee, Judicial Member
Hon'ble Dr Nandita Chatterjee, Administrative Member



Shri K.Bala Subramanian,
S/o Shri G. Kengamuthu
Working at Junior Engineer,
Andaman Lakshadweep Harbour Works,
Car Nicobar - 744301.

.....Applicant

-Versus -

1. Union of India,
Service through the Secretary,
Ministry of Shipping,
New Delhi - 110001.
2. The Chief Engineer & Administrator,
Andaman Lakshadweep Harbour Works,
Mohanpura, Port Blair-744101.
3. Deputy Chief Engineer-IV,
Andaman Lakshadweep Harbour Works,
Hut Bar, Little Andaman-744207.

.....Respondents

Advocate for the applicant : Ms A.Nag

Advocate for the respondents : Mr V D S Balan

ORDER

MS BIDISHA BANERJEE, MEMBER(J)

The applicant a Junior Engineer in Andaman Lakshadweep Harbour Works (ALHW) has preferred this O.A to seek the following reliefs :

- a) To call for the records related to adverse remark made by the accepting officer in adverse remarks made by ACR for the year 2016-2017 and the rejecting order passed by the reviewing authority and set aside and quash the adverse remark made by the accepting officer in the Annual Appraisal Performance Report (APAR) for the year 2016-2017 of the applicant.
- b) To set aside and quash the memorandum No.ALHW/APAR/12(2)/2017/05 dt. 27.02.2018 issued by the Chief Engineer and Administrator, ALHW, Port Blair.
- c) To pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice.

2. His case in a nutshell is that he was appointed as Junior Engineer (Civil) in the year 1995. All the while the Reporting Officer has been submitting his APARs with remarks 'Very Good' and the Accepting Officer has been accepting the same. However, things took different turn for the year 2016-17, when the Reporting Officer submitted the APAR to the Accepting Officer with the remarks 'Very Good' but the Accepting Officer refused to accept the same on the ground that the integrity of the applicant was doubtful. The applicant preferred a representation for expunction of adverse remarks to the Chief Engineer and the Administrator, ALHW, Port Blair which has been turned down and hence this O.A.



3. The applicant has pleaded that the Accepting Officer while spoiling the APAR for 2016-2017 has mentioned about the work executed in the year 2010-2011 when he was not Deputy Chief Engineer which was against law and procedure. The Deputy Chief Engineer-IV had no knowledge about the execution of protection work stage IV at Campbell Bay during the year 2010 to March 2011. While entering the adverse remarks she has mentioned about intimating the fact to the Chief Engineer and Administrator with regard to the work of construction of shore Protection Work (SPW) Stage-IV at Campbell Bay but failed to give a copy of the intimation letter and as such deprived the applicant from an opportunity to explain. Ld. Counsel at the hearing invited our attention to page 31 of the O.A where it was recorded as under :

"Comments on the remarks of the Reporting/Reviewing Author difference of opinion, if any with reasons for the same. In such case Authority will also give overall grade on a score of 1 - 10 (Please attached).

Not accepted. His integrity is doubtful. In intimated CE & A confidentially with respect to the case for the work of "construction of SPW Stage-IV at Campell Bay."

It was entered on 27.7.2017.

The applicant has while raising his objection on the adverse remarks made by the Accepting Officer vide his representation dated 21.11.2017 to the Chief

Engineer and Administrator has mentioned that the Accepting Officer was not empowered to enter the adverse remarks for the period 2016-17 on the basis of a work performed during 2010-11 that too at Campbell Bay while the applicant was at that time posted at Car Nicobar. She has not disclosed the method by which the integrity was tested by the Accepting Officer. The applicant thus sought for expunction of the adverse remarks. In the impugned memo dated 27.02.2018. The Chief Engineer & Administrator in reply, opined as under :



"Sub: Objection on the adverse remarks made by the Accepting Officer, DCE-IV ALHW, Hut Bay in the APAR for the year 2016-17 -- reg.

Your representation dated 21.11.2017 on the above subject has been examined by the undersigned and the Accepting authority has found your integrity as unsatisfactory for the year 2016-17 based on the stand taken by you during the arbitral proceedings held on 9th to 11th October, 2017 in which you have taken adverse stand against the ALHW organization and as such the arbitrator has awarded quantum to the contractor and caused loss to the ALHW organization.

In view of the above, adverse remarks communicated by the Accepting Authority holds good and your representation is disposed off.

Sd/-S.V.Madabhavi

Chief Engineer & Administrator (ALHW)"

4. Having heard the learned counsel for the parties and having noted the fact that the adverse entry was made not on the basis of his performance for 2010-11 but on the basis of an Arbitral Award that went against the Administration in the year 2017 the entry apparently appears to be justified.
5. However, at the time of hearing, Ld.counsel for the applicant would vociferously submit that one P. Suman complained that some corrections were entered by the applicant, while he admitted before the Tribunal that the corrections were made by him, and that the applicant having deposed and placed truth before the Arbitration tribunal which went against the respondent authorities was penalized with the adverse remarks of integrity being doubtful. Therefore, in the present case integrity to the administration is pitted against the truthfulness of an employee before the Arbitral Tribunal.

6. The applicant in his rejoinder has stated that initiation of criminal case against an individual did not mean that the individual was guilty of an offence and that denial of promotion to the applicant on the ground of adverse remarks was bad. When the authorities have not been able to prove that the applicant had deposed falsely before Arbitrarial Tribunal, the applicant ought not to have been penalized for the statement recorded during Arbitration proceedings.



7. The respondents in their reply have categorically pointed out that the applicant misused his official position as a public servant, entered into a criminal conspiracy with M/S Surya Rao, Contractor of ALHW to cheat the ALHW to the tune of Rs.93 lakhs and caused corresponding unlawful gain to the private contractors by abusing their official position as public servants, for which an FIR was lodged. To which the applicant has replied that the CBI case was registered in June 2017, whereas DPC convened in January 2017 when the applicant's case was kept in sealed cover due to illegal entry and therefore CBI registered case had got nothing to do with the denial of promotion to the applicant.

8. The applicant has asserted authoritatively that he had taken a correct stand during the Arbitral proceeding held on 9th to 11th October 2016 and specifically stated that the correction made in the Measurement Book was not done in his presence rather it was carried out in his absence after he had signed the Measurement Book.

9. We heard the Ld.Counsels & perused the records.

10. Annexure R-5 to the reply records the following show cause to the applicant :

"We are in receipt of 28th to 36th Arbitration proceedings held from 7th October to 11th October 2016 at Port Blair in the meeting room of CE&A,ALHW. It is noted that in response to:

1. Q.No.26 of Chief Examination you have stated ..."No, while I am check measuring there is no correction and deletion."

2. Q.No.30, of Chief Examination, you have stated ... "While check measuring I have not done any correction and any deletion. I do not remember the date exactly."

3. Q.No.31, of Chief Examination, you have stated.. "These initials are not mine."

4. Q.No.90, of Cross Examination, you have stated.... "there was no correction when I was signed."

5. Q.No.175, of Cross Examination, you have stated... "When I check measured there was no correction. Further, no comments."

Your above responses conclusively establishes that you have denied of any corrections made in pages 94, 95, 96, & 97 of MB-1905 and pages 54, 57 and 58 of MB-1951. Further you have also disowned your initials for attestation of these corrections in the MB.

In view of the above your confirmation should reach within 15 days time regarding statement made on above arbitration proceedings for taking further action."



The applicant had replied as under :

"When I was working in Mangalore, during the month of November 2011, I was instructed to proceed to Campbell bay for sorting out certain issues on various works.

Accordingly I reached Campbell bay on 25.11.2011 and attended the same. during this period I did check measurement of the measurement recorded by the JE's for the item of dumping of stone boulders for forming the rubble mound profile on the sea side of RCC sea wall for stage IV shore protection work also as per standard practice.

At this juncture, I wish to confirm that at the time of check measurement and after completion of the same, no correction or deletions of any particular measurement were noticed. The recorded measurements were in full shape without any correction or deletion even after my check measurement. The EIC also conducted test check during when also there was no cutting or deletion of measurement.

Immediately there after I left Campbell bay on or after 23.12.2011 and proceeded to my new head quarter (Mangalore). After this I did not have any access to those MB's for any reason or whatsoever. I further wish to state that my initials affixed on few locations of the record entry of the measurement

B

in MB's are to confirm the measurement originally recorded by the JE's and not at all for any cutting or deletion.

Had there been any cutting or deletion of measurement done by me or done with my knowledge, I would have affixed fresh initials near to the correction giving reason for doing so (like "cutting/deletion is made in line---page no--- of the MB because of---). I would have also immediately brought the same to the notice of the EIC who conducted the test check. This had not happened till my departure from Campbell bay.

When the chief examine counsel enquired me showing the initials affixed near said cutting/deletion of certain measurements, I disowned the same. This was mainly because there was no necessity for such attestation with fresh initials of mine as the said correction/deletion was not carried out by me or with my knowledge at any point of time. I further understand that Mr Suman JE(Civil)(a witness produced by the department) had admitted that the said correction/deletion were done by him in response to a question posed by Chief examine counsel, and hence I do not have liability on such matter."

We further discern that one P.Suman has recorded the following in his confidential letter addressed to the Executive Engineer dated 29.05.2014 :

"Shri K.Balasubramanian, JE who was AE (i/c) during the period of execution had test checked at site on 21st and 22nd December, 2011 and the certain measurement were not tallying with the details rendered in M Book and hence Shri K.Balasubramanian has deleted and corrected the measurement on the MBook and initialed the corrections at the time of test check. Hence the corrections on the MBook are not intentional but it is the actual measurements/work done by the agency at site.

I have already intimated vide my letter dated 21.06.2012 that during the visit of Shri K.Balasubramanian JE and Shri Ramesh Chandra Kalabhai EE during 12/2011, the entire stretch of boulder formation at (Stage-IV) has been checked and record entries are made as per the actual."



11. Having heard the learned counsel for the parties and having considered their rival contentions, having noted the factual discrepancy, and that the applicant cannot be held guilty of deposing the truth before a Tribunal, we are of the considered opinion that the adverse entry of doubtful integrity ought not to have been recorded to spoil his APAR. We are not aware of the outcome of CBI case, which would have had a definite bearing on the remarks in the APAR.

12. In view of such, we quash the order of the Chief Engineer dated 27.02.2018 and remand the matter back to the Chief Engineer to consider the documents as extracted supra, the findings of CBI Court, in the event the same is available and to issue a fresh order on the representation preferred by the applicant bearing in mind that an act of 2010-11 could not have been brought into consideration to malign the applicant and to spoil his APAR to deny his promotion arbitrarily.

13. Let therefore, a personal hearing be accorded to the applicant and appropriate orders be issued within one month. In the event the adverse remarks are expunged the consequential benefits be accorded to the applicant as admissible in law. No costs.

(Dr Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

PG