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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 584 of 2012
Cuttack, this the 8th day of January, 2015

Murali Mohan Rao

Versus


Union of India & Ors.


..... Applicant

..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ✓
2. Whether it be referred to PB for circulation? ✓


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judl.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A. No. 584 of 2012

Cuttack, this the 8th day of January, 2015

CORAM:

THE HON'BLE MR. A.K.PATNAIK, MEMBER(JUDL)
THE HON'BLE MR. R.C.MISRA, MEMBER (ADMN.)

.....
Shri Murali Mohan Rao, aged about 55 years, Son of M. Prakasam, Senior Surgeon, Regional Leprosy Training & Research Institute, Aska, PO. Babanpur, Dist. Ganjam, Odisha, resident of Gandhi Nagar, Main Road beside Paramjyoti Cinema Hall, Berhampur-760 001, Ganjam, Odisha.

.....Applicant

By legal Practitioner : M/s. K.C.Kanungo, R.C.Behera, Ms. C. Padhi

-Versus-

UNION OF INDIA REPRESENTED THROUGH

1. Secretary to Govt. of India, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi-110 001.
2. Director General of Health Service, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi-110 001.
3. Deputy Director General (Leprosy), Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi-110 001.
4. Director, Regional Leprosy Training Institute, Aska (Babanpur), Dist. Ganjam, Odisha.

....Respondents

By legal practitioner : Mr. S.B.Jena, Addl.CGSC

O R D E R

A.K.PATNAIK, MEMBER(J) :

The Applicant who is a Senior Surgeon in the Regional Leprosy Training Institute, Aska, has filed this Original Application U/s.19 of the Administrative Tribunals Act, 1985 assailing the adverse remarks recorded in his CCR/ACR for the year 2005-06 which was communicated to him vide letter dated 20.09.2010 and the order of rejection of his representation dated submitted by him against recording of such adverse remarks. Hence he has prayed in this OA to quash the order under Annexure-A/1, A/4 & A/9 and to direct the Respondents to expunge the adverse entries made in his ACRs and grant him all other consequential benefits/entitlements on expunction of the adverse remarks made in his ACR for the period 2005-06.

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2. Respondents have filed their counter trying to substantiate the stand taken by them in their order of rejection under Annexure-A/9 by stating that the representation of the applicant against below bench mark grading in his ACR was sent to the concerned authority as per DOP&T OM dated 13.4.2010 and the applicant was intimated that there is no ground to reconsider the decision under Annexure-A/9 and have prayed for dismissal of this Original Application to which the Applicant has filed rejoinder.

3. We have heard Mr. K.C.Kanungo, Learned Counsel for the Applicant and Mr. S.B.Jena, Learned Addl. CGSC for the Union of India, appearing for the Respondents and perused the materials placed on record.

4. Before dealing with various contentions advanced by the counsel appearing on behalf of the respective parties, we feel it proper to quote the remarks made in Part-III column of the ACR/CCR of the Applicant for the period 2005-06 by the Reporting Officer. It reads as under:

A(1)	Nature and Quality of work	AGREED
(2)	Quality of output	GOOD.
(3)	Knowledge of sphere of work	GOOD
B (1)	Attitude to work	HE IS A DEDICATED OFFICER
B(2)	Decision making ability	GOOD
B(3)	Initiative	HE IS ABLE TO MANAGE
B(4)	Ability to inspire and motivate	GOOD
B(5)	Communication skill.	GOOD
B(6)	Inter-personal relations and teamwork.	HE MAINTAINS GOOD RELATIONS WITH ALL
B(7)	Relations with public.	GOOD

Agreed

5. At the outset, Mr.K.C.Kanungo the Learned Counsel for the Applicant submitted that the remarks "GOOD" recorded in the ACR of the Applicant for the year 2005-06 which was communicated in letter dated 20.09.2010 so also the order of rejection dated 12.07.2012 are not sustainable on the ground of delay and laches. It has been contended that though the remarks pertain to the year 2005-06, yet the same was communicated to the applicant only on 20.09.2010. Though the applicant submitted representation praying for expunction/upgradation, the Respondents rejected the same without assigning any reason although with the same materials the remarks recorded for the year 2002-03 and 2003-04 were upgraded from GOOD to VERY GOOD and, thus, the same is not sustainable in the eyes of Law being contrary to the provisions as enumerated under the Rules. Besides the above delay and laches, the remarks recorded in the ACR of the applicant are not tenable being based on no evidence. Mr.Kanungo by drawing our attention to paragraphs 7 & 8 of the guidelines enclosed to the counter filed by the Respondents submitted that the said guidelines stipulate that in order to ensure uniformity and objectivity of reviewing ACRs pertaining to below bench mark grading, if the Reporting and Reviewing Officer had given positive remarks in respect of the attributes i.e. (a) attitude to work, (b) knowledge of spheres of work (c) relation with public, (d) integrity and (e) general assessment then that would strengthen the case for upgradation of the ACRs of the officer. Mr.Kanungo submitted that when applying the above principle if the committee upgrade the ACR for the year 2002-03 and 2003-04 then there is no justification in not upgrading the ACRs of the applicant for the year 2005-06. His next contention is that when Reporting Officer agreed with the 'SELF APPRAISAL' written by Applicant which was concurred by the Reviewing Officer, recorded against



Column B (1) that the applicant is a DEDICATED OFFICER and did not make any comments in Column D (3) –General assessment, let alone recording any shortcomings of the applicant, it shows that grading GOOD is not justifiable. Coupled with the arguments advanced as above, it was submitted by Mr. Kanungo that at no point of time any short comings of the Applicant was communicated or no ephemeral character roll was maintained for which the remarks as recorded are subjective in nature rather than objective in character and therefore, the same needs upgradation. He also pointed out that rejection of representation without considering the same in proper perspective is against the cardinal principles of natural justice as held by the Hon'ble Apex Court in very many cases. In support of the aforesaid stand, Mr.Kanungo has relied on the following decisions:

- (a) State of Harayana V P.C.Wadha & Another, AIR (1987) SC 1207 [paragraphs 13 & 14];
- (b) Dr.Arun Basu Sarkar V State of Tamil Nadu 2000 (2) AISLJ, VOL.7 263;
- (c) Himangsu Sekhar Jha V State of West Bengal, 1979 (1) SLR 837;
- (d) Sukhdeo V the Commissioner of Amarvati Division, 1996 (5) SC 477 (para 6);
- (e) The Inspector of Post Offices V V.Ranganathan Prabhu, 1972 (2) SLR 703(para 31);
- (f) S.N.Mukharjee V Union of India, AIR (1990) SC Page 1984, para 35;
- (g) Order dated 12.06.2008 in OA No. 936 of 2005 in the case of Thakur Arun Kumar Sinha V Union of India and others of the Cuttack Bench of the Tribunal.

6. On the other hand, Mr. Jena appearing for the Respondents by reiterating the stands taken in the counter submitted that the remarks made in the ACR are completely based on the available material/record and that's too without any ill intention. He has contended that in compliance with the principles of natural justice the remarks recorded in his ACR was duly communicated to the applicant on receipt of his representation the same was duly considered by a Committee



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convened for the said purpose. After taking into consideration the points raised by the Applicant in his representation vis-a-vis the available material/records, representation of the applicant was rejected which was duly intimated to him which as per various judicial pronouncements needs no interference by this Tribunal as the authorities are competent to apply their minds before writing the ACR.

7. After giving in-depth consideration to various arguments advanced by the learned counsel for both the respective parties we have perused the materials. We have also gone through the decisions relied upon by the learned counsels appearing for the parties.

8. Before advertng to the arguments advanced by the parties, we would like to put on record that it is trite law that the purpose of judicial review is to ensure that the individual receives fair treatment. The Judicial Review is not directed against the decision but is confined to the examination of the decision making process. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct. Rules are framed and laws are made only to be followed to create a society free from misdeeds or misdemeanor and to make the society sustainable and orderly. Similarly, fairness needs to be the principle to ensure that the authority will arrive at a just decision protecting everybody's interest. To use the time hallowed phrase that 'justice should not only be done but be seen to be done' is the essence of fairness equally applicable to administrative authorities. Thus, fairness is the prime test for proper and good administration.

9. The Confidential roll of a Government servant is just like a mirror which reflects his performance and is paramount to be considered for progression

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in the hierarchy of service. Though statutory rules and administrative instructions framed operate the field of writing confidential reports and it is on the basis of a self appraisal of an officer which is on the basis of watching the performance of the concerned for a statutory period with intent to perform the officer commented upon/to give him an opportunity to improve. Various judge made laws available on the subject make the matter clearer that there are different stages of writing one's CCR/ACR i.e first is the counseling, second is the guidance and third is the consequences of the officer failing to show the desired improvement. Only when an officer fails to show the desired improvement then only the adverse/advisory remarks are included in his confidential report so that cognizance is taken of his weakness while planning his future placements. There cannot be any dispute that in the matter of recording ACR/CCR in a judicial review, the Court/Tribunal would not step into the shoes of administrative authorities but in rule of law when the remarks on the face of it are not justifiable and an incorrect version has been incorporated to support the remarks, which is non-existent, then only the legal mala fides are to be inferred with by the competent court. Malice in law acting with caprice, arbitrariness in utter derogation of rules and highlighting adverse materials which is either nonexistent or is not supported by justified reasoning can be agitated before the court of law by the affected person for redressal.

10. Report which is annually recorded in confidential report has some purpose. In fact the performance of an employee, the opinion about his individuality, personality, status and role played, work action, performance activities, attitude, devotion, diligence, honesty, integrity and faithfulness of an employee has to be assessed. Confidential character reports should be written by superior officers objectively, impartially and without any prejudices. Such annual




confidential report has to be recorded with confidentiality with two folds objectives in mind i.e. firstly to give an opportunity to the officer concerned to remove deficiencies and to inculcate discipline; secondly it seeks to serve improvement of quality excellence and efficiency of officer for public service. This has more lucidly dealt into by this Tribunal while disposing of the OA No.936 of 2005 filed by Thakur Arun Kumar Sinha V UOI and others in its order dated 12th June, 2008.

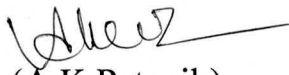
11. Keeping in mind the principles set out and discussed above vis-à-vis the materials placed by the Applicant so also Respondents in support of their respective prayers, we find no reason to hold that the adverse ACRs recorded and communicated belatedly are based on due application of mind/ available record rather we find that the final grading 'GOOD' stands incongruous to the remarks given in other columns as stated above. Nothing has been produced by the Respondents to show that any short coming which prompted the Respondents to assess the applicant as a GOOD Officer has ever been communicated but in spite of that there was no improvement. We also find no reason to approve the delay in communication of the same to the Applicant. Similarly, we find that the rejection of the representation is bereft of reason. Further we find that no comments were obtained from the concerned officer recorded the ACR/CCR of the applicant. We also find that the Reporting Officer graded the applicant as GOOD without giving any comments on the column 'GENERAL ASSESSMENT' and, therefore, it can safely be concluded that the grading GOOD is not only without any reason but also non application of mind. Similarly, we find that the grading given in the ACR of the Applicant for the year 2006-07 was challenged by the applicant in OA No. 54 of 2010 and for the illegality, as noted above, this Tribunal vide order dated 23.12.2011 quashed such grading as well as the order of rejection of his

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representation. For the discussions made above, in the instant case we find sufficient ground in the stand taken by the applicant in support of the relief claimed in this OA. Accordingly, the adverse remarks recorded and communicated under Annexure-A/1 & A/4 so also the order of rejection under Annexure-A/9 are hereby quashed.

12. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.

(R.C.Misra) 
Member (Admn.)


(A.K.Patnaik)
Member (Judicial)

RK/CM