

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION No. 477/2013

WEDNESDAY..., this the 27th day of January, 2016

CORAM:

HON'BLE MR.U.SARATHCHANDRAN, JUDICIAL MEMBER

K.V.Anilkumar, aged 52 years, s/o Late K.V. Apputty,
Assistant Superintendent of Post Offices (HQ)
Ottappalam Division, Ottappalam, 679101,
residing at "Anaswara", 1/4304 A, Peoples Road,
Eranhipalam P.O., Calicut 673 006.

Applicant

(By Advocate Shafik M.Abdulkhadir)

versus

1. Union of India represented by Director General,
Department of Posts, Dak Bhavan, Sansad Marg,
New Delhi -110 001.
2. The Chief Postmaster General, Kerala Circle,
Trivandrum 695 033.
3. The Postmaster General, Northern Region,
Kozhikode 673011.
4. The Senior Superintendent of Post Offices,
Kozhikode Division, Kozhikode -673 003.
5. Shri P.Ramakrishnan, presently working as
the Senior Superintendent of Post Offices,
Palakkad Division, Palakkad -678 001.

Respondents

[By Advocate Mr.Anil Ravi, ACGSC (R1-4)]

This Original Application having been heard and reserved for orders on
06.01.2016, this Tribunal on 27-01-2016..... delivered the following:

ORDER

Per HON'BLE MR.U.SARATHCHANDRAN, JUDICIAL MEMBER

Applicant is aggrieved by the adverse entries and below bench mark grading awarded to him in his Annual Performance Assessment Report (APAR for short) for the period 01.04.2004 to 14.09.2010 report marked as Annexure A/1. The reporting



officer in Annexure A/1 is Respondent No.5 who was holding the post of Resondent No.4 at that time. He is also aggrieved by Annexure A/2 order passed by Respondent No.2 on his appeal against A/1 APAR. Applicant started his career with the Postal Department in May, 1983. He was promoted to the cadre of Inspector of Posts on 1.5.93 and further promoted as Assistant Superintendent of Post Offices (ASP) Kannur Sub Division on 9.9.2005 under Respondent No.5 who was the then Senior Superintendent of Post Offices (SSP).

2. Applicant alleges that right from the time when he was working under Respondent No.5 in the Kannur Postal Division, the latter was having personal animosity towards him for not acceding to his request for taking action against those who are not in good terms with him. Out of this personal animosity towards the applicant, Respondent No.5 was trying to spoil the career of the applicant by entering unjustified adverse entries in the ACR for the 2005-06. He states that the aforesaid adverse entries were expunged by the then Postmaster General, Northern Region vide Annexure A/4 Memo. Applicant states several other incidents which led to the increased animosity exhibited by Respondent No.5 to him when both of them again worked together in another Division i.e.Calicut Division. According to Applicant, Respondent No.5 was arrested by the Calicut police for immoral activity with a lady substitute of GDS which incident was published in the newspapers and also in Television channels. Applicant states that when Respondent No.5 visited Beypore North Branch post offie on 13.8.10, a GDS Mail Deliverer Shri P.Varijkshan had heated exchange of words with Respondent No.5 on the issues of the later's immoral activities. Thereafter 5th Respondent directed to 'put off' the aforesaid GDS Mail Deliverer on the pretext of unsatisfactory deivery work. Applicant immediately visited the Beypore Branch Post Office but could not detect any accumulation of postal articles warranting 'put off duty' of

the said GDS employee.

3. Applicant alleges that the above aspects have led to Annexure A/1 APAR prepared by Respondent No.5 in his capacity as Reporting Officer which was simply endorsed by the Reviewing authority without looking into the realities of the matter. Applicant impugnes Annexure A/1 mainly on the ground of personal vendetta and impractical evaluation made in Annexure A/1 by the reporting officer on applicant's performance in the work and the allegations of non-compliance of time schedules. According to him, soon after his visit to Beypore Branch Post Office and after counting the pending postal articles in the beat of the aforesaid GDS Mail Deliverer (A/8) and on perusal of the written statement made by the aforesaid mail deliverer (A/8 collectively) he submitted Annexure A/19 report to Respondent No.4 indicating that action against the GDS MD is unwarranted.

4. Applicant further points out that soon after the aforesaid incident he was transferred from Calicut Sub Division to ASP Headquarters, Ottapalam Division by way of punishment vide Annexure A/9 Memo and A/10 report. He alleges that, as a calculated move to include the Beypore incident as a pretext for adverse APAR entry, Respondent No.5 issued Annexure A/11 communication dt.15.9.2010 stating that applicant had not acted as per directions of Respondent No.4; after he was transferred from Calicut Division.

5. According to applicant the above incidents culminated in Annexure A/1 APAR report by Respondent No.5 in his capacity as the reporting officer granting a numerical grading of 3.5. Applicant states that the grading given being far below the benchmark will adversely result in his promotions and even to his entitlement

to financial upgradations under the MACP scheme. Applicant alleges that the adverse remarks in the APAR was communicated to him after nearly one year of making the adverse entry and that the reviewing officer himself reviewed it much later than the time schedule prescribed in the Annexure A/15 compendium of guidelines and instructions issued by the Department of Personnel and Training from time to time on the preparation and maintenance of APAR .

6. His Annexure A/16 appeal against Annexure A/1 APAR was rejected by Respondent No.2 for the reasons extracted below:

" 5. I find that the assessment was made by the Reporting Officer after considering the following undeniable facts-

- i) The official failed to take timely action to clear the pendency of mails.
- ii) The official did not streamline delivery beats of Beypore SO and its BO inspite of specific instructions from Divisional office.
- iii) Non-achievement of revenue targets.

6. The official has not submitted any satisfactory explanation on these points. The fact that his achievement of targets in the first six months was "NIL" as admitted by him in the self appraisal clearly stands against him. Instead of providing facts for consideration against the below benchmark grading, he has furnished certain issues which are purely personal in nature to the Reporting Officer. In these circumstances, I have no other option but to conclude that the numerical grading of "3.45" given by the Reporting Officer is an actual reflection of the performance of the official during the period and there is no case for intervention on behalf of the official. The representation is disposed of accordingly.

Sd/-
(Shoba Koshy)
Chief Postmaster General

7. Applicant alleges that Respondent No.2 had not adverted to the administrative instructions contained in Annexure A/15 on the preparation and maintenance of APAR and had not reckoned his previous performance reported in Annexure A/17 APAR for the period 1.4.2009 to 31.3.2010 prepared by the same Respondent No.5. But the numerical grading of 4.30 awarded in Annexure A/17 APAR was upgraded by the Reviewing authority to 5.3 observing that the numerical



grading given by the reporting officer was 'assessed low'.

8. Respondents resist the OA stating that Respondent No.5 has no personal animosity towards the applicant and that the allegations against the 5th respondent are imaginary creations of applicant. According to official respondents the applicant was leggard in performing his duties and the instances of his inaction had been recorded in the communications issued to him as well as in the official reports. It is further stated by the official respondents that applicant has been arrogant and had exhibited misdemeanour towards Respondent No.5 as evident from the later's complaint, a copy of which is marked as Annexure R/4. Official Respondents further produced Annexure R/5 - a copy of the written statement prepared by the applicant in his official capacity for the purpose of pesenting before this Tribunal in OA 532/13. They point out that there are 49 mistakes in the statement prepared by him, which is a proof of his inefficiency.

9. Applicant filed a rejoinder producing Annexure A/19 & A/20 reports prepared by him after visiting Beypore North branch Post Office. According to applicant, Annexure R/5 was not prepared by him, but by one Mr.V.T. Lenin, Superintendent of Post Offices, Ottapalam Postal Division. He state that after sending R/4 report he was immediatley served with Annexure A/21 communcation by Respondent No.5 calling for explanation for availing earned leave without permission. Respondent No.5 pursued the matter further and issued Annexure A/23 communcation calling for representation as a prelude to take disciplinary action which was quashed by the then Postmaster General of the Northern region (however no document was produced in support of that contention).



10. Heard Shri Shafik M.A. for the applicant and Mr. Anil Ravi, learned ACGSC. Perused the record.

11. The very purpose and philosophy behind the preparation of Annual Performance Assessment Report (APAR) has been succinctly stated in Annexure A/15 compendium prepared by DoPT. It reads:

1.1. The performance of Government is ultimately the sum total of the performances of the individuals through which it functions. Government has therefore, to know from time to time how its constituents function. This information is essential for proper Personnel Administration and Management.

1.2. It is in the interest of every Government servant that he should know how well or otherwise, he is performing his job. Without this feed back information, it will be difficult for him to plan his career development in a systematic manner. In fact, he would be more interested in knowing his defects. His defects would affect his career advancements in the long run, unless he comes to know of them in time and overcomes them by taking special efforts.

1.3. The immediate superior officers of a Government servant, who is the Reporting Officer, in the matter of writing his assessment Report, should be vitally concerned, in writing the Annual Performance Assessment Report (APAR) of every one of his subordinate in an objective and impartial manner. As the superior officer functions through his subordinates, he also gets credit for the good work done by them. It would, therefore, be in the interest of the Reporting Officer himself to assess the performance of the subordinates objectively and thereby give them counseling and proper guidance for improvement of their performance.

1.4. The system of APAR on the performance of Government servants is a means to an end and not an end in itself. The ultimate goal is to optimise the achievement of Government policies and programmes. This is possible only if the APAR lead to the optimization of the performance of the concerned Government servants. The main focus of the Reporting Officer should, therefore, be developmental rather than judgements. The APAR should be a true indicator of the achievement of the Government servant; it should

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not be a mere tool to control or discipline him.

1.5. The system of APAR has two principal objectives and the Reporting Officer should have a very clear perception of these objectives. The first and foremost is to improve the performance of the subordinate in his present job. The second objective is to assess the potentialities of the subordinate and prepare him through appropriate feed back and guidance for future possible opportunities in service. To a great extent, the second objective is dependent on the achievement of the first.

1.6. It is the duty of the superior officer to give the subordinate a clear understanding of the tasks to be performed and to provide requisite resources for his performance. The subordinate is required to contribute to the best of his capacity to the qualitative and quantitative achievement of the given tasks making optimum use of the resources provided. Also, both the superior and his subordinate have to be necessarily aware of the ultimate goal of their organization, which can be achieved only through the joint efforts of both of them. This is the basic philosophy underlying any system of APAR.

Thus it can be seen that APAR is not intended to be a fault finding mechanism but is for an objective and impartial assessment of Government employees. Annexure A/15 contains clear instructions to the officers concerned with the preparation, reporting and reviewing of APAR. Appellate authorities have been clearly instructed as to how and with what objective in mind the appeals have to be decided.

12. Unfortunately in the instant case the events transpired and the record do indicate that the applicant had been constantly hunted for by Respondent No.5 with the unsubsumed desire for vengeance, as can be seen from Annexure A/4, R/4 and later, while applicant was working under him in the Calicut Sub Division. A close perusal of R/4 shows that the alleged conduct of the applicant towards Respondent No.5 was so "wounding" to him that it resulted in the latter writing



Annexure R/4 "with a heavy heart". At the end of R/4 Respondent No.5 urges Respondent No.4 : " under these circumstances I request your goodself to kindly take serious notice against the misdemeanour shown by Shri Anil Kumar." Yet, it is surprising that the official respondents states in the reply affidavit that Respondent No. 4 had no personal malice to the applicant. Annexure A/4 and the subsequent communications he had issued as accepted in Annexure A/22 issued by Respondent No.5 while he was in Calicut sub division indicate that he was scheming a plan for wreaking vengeance. *A fortiori* the same story was repeated when both the officials were posted in the Calicut Postal Division also.

13. The official respondents highlight Annexure R/3 'visit remarks on Beypore SO' dt 17.8.10 prepared by Respondent No.5 as the incident which triggered Annexure A/19 letter from Respondent No.5 and A/20 reply by the applicant. He also refers to A/18 communication sent by him on 7.9.10. This Tribunal is of the view that there is adequate material available in this case to indicate that the relationship between Respondent No.5 and the applicant was not smooth and that they were often perceptibly antagonistic towards each other. No wonder, this has reflected in Annexure A/1 APAR grading also.

14. Applicant refers to Annexure A/15 compendium which prescribes a time schedule to be observed by the reporting officers and reviewing officers. The *raison d'etat* for fixing the time schedule has been stated in Para 5.2 in chapter 5 of Annexure A/15 compendium on APAR. It reads:

"5.2 As cases continue to occur where confirmation, regular promotion, appointment to sensitive posts, etc. would not be considered in time because of non-availability of APARs for the relevant period, the matter of timely completion of APARs was further reviewed and it has now been provided that in case the APAR is not initiated by the Reporting Officer for any

reason beyond 30th June of the year in which the financial year ended, he shall forfeit his right to enter any remarks in the APAR of the officer to be reported upon and he shall submit all APARs 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 APAR beyond 31st August of the year in which the financial year ended. The Section entrusted with maintaining the APARs shall, while forwarding the APARs for self -appraisal with copy to the Reporting /Reviewing Officers also annex the schedule of dates. It shall also bring to the notice of the Secretary concerned in the case of Ministry/ Department and the Head of the organization in the case of attached and subordinate offices, the names of those Group A and B Reporting Officers and Group A Reviewing Officers in the month of October after receiving the completed APARs who have failed to initiate/ review the APARs even by 30th June or 31st August as the case may be. The Secretary in the Department/ Head of the organization in the case of attached/subordinate offices may direct to call for the explanation of the concerned officers for not having performed the public duty of writing the APARs within the due date and in the absence of proper justification direct that a written warning for delay in completing the APAR be placed in the APAR folder of the defaulting officer concerned.

5.3 In case the remarks of the Reporting officer or Reviewing Officer as the case may be, have not been entered in the APAR 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 APAR 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."

15. The afore quoted administrative instructions highlight the importance of timely preparation of APAR and the time schedule for preparing each stage, making it explicitly clear that the reporting officer/ reviewing officer would forfeit his right to write any remarks in the APAR after the stipulated time. In the case of reporting officer, 30th June is the time prescribed. For reviewing officer to enter the remarks the time stipulated is 31st August. In the instant case Annexure A/1 clearly reveals that the entries made by the reviewing authority are undated.

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It is seen at page 12 of the APAR that Shri Hemant Kumar Sharma the Postmaster General, Northern Region, Calicut had made entries in para 5 of the Annexure A/I APAR in the month of June 2011, without specifically mentioning the date. Except the cryptic answers 'Yes' , ' Nil' , ' NA' , ' in normal course' , ' He does his work in an average manner', the reviewing officer has not stated any explicit reasons for endorsing the entries made by the reporting officer. It appears that the reviewing authority made the entries in annexure A/1 APAR in a hurried and nonchalant manner, without even recording the date on which he had done that exercise. Applicant says that the adverse entries in Annexure A/1 was communicated to him only on 31.7.12 through the Superintendent of Post Offices, Ottapalam. The belated communication of adverse entries (as per Annexure A/15 compendium of APAR, the time for disclosure of entries in APAR to the officer reported upon is 15 September of the financial year concerned) and the belated entries made in A/1 by the reviewing officer have been highlighted by the applicant in Annexure A/16 appeal. But strangely, Respondent No.2 states in Annexure A/2:

" The contention of the official that there was delay in communicating the below benchmark grading has no relevance since he has not been denied the opportunity to appeal against the below benchmark grading."

It appears that even a top ranking officer like respondent no.2 has treated Annexure A/1 APAR as a fault finding mechanism and has turned a Nelson's eye to the importance of the time schedule stipulated in Annexure A/15 compendium. In Annexure A/2, respondent No.2 finds fault that applicant had not submitted any satisfactory explanation regarding his timely action to clear the pendency of mails:

" i) The official failed to take timely action to clear the pendency of mails, ii) The official did not streamline delivery beats of Beypore SO and its BO inspite of specific instructions from Divisional office. iii) Non-achievement of revenue targets. "

16. Applicant contends that he has produced annexure A/17 and A/20 reports addressed to Respondent No.4 regarding the action he had taken in respect of the incidents and the shortcomings in the Beypore Post Office. He referred to Annexure A/8 (collectively) details of the pending postal articles at Beypore Post office and the statement given by the GDS MD concerned at Beypore (at pages 38 & 39 of the paper book).

17. Regarding the non-achievement of the revenue target the applicant states that in the previous APAR (Annexure A/17) the financial targets achieved by the applicant had been taken note of (at page 73 of the paper book) and that since A/1 APAR is for the period 1.4.10 to 14.10.10 he could not show the financial results secured by him since he was transferred from Calicut Division on 14.9.10. He further states that due to the express oral instructions by Respondent No.5 to the subordinate officials not to give records relating to the financial achievements made by the applicant, he was not in a position to collect and enter the details in Part-I of Annexure A/1 because by that time he was working in Ottappalam division. These contentions have not been specifically denied by the official respondents.

18. Thus, as stated earlier, Annexure A/1 APAR has to be viewed with a great amount of circumspection. It is unfortunate that Respondent No.2 also was carried away by the statements she had collected from the reporting officer and reviewing officer (as stated in Annexure A/2). A perusal of Annexure A/2 clearly shows that no indepth analysis had been made by the Respondent No.2 on the grievances stated in Annexure A/16 appeal against Annexure A/1 APAR. In this context, this Tribunal wishes to quote certain observations made by the Apex Court in *State of U.P v. Yamuna Shankar Misra and another* AIR 1997 SC 3671; The apex court held:

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" It would, thus, be clear that the object of writing the confidential reports and making entries in the character rolls is to give an opportunity to a public servant to improve excellence. Article 51A (j) enjoins upon every citizen the primary duty to constantly endeavour to prove excellence, individually and collectively, as a member of the group. Given an opportunity, the individual strives to improve excellence and thereby efficiency of administration would be augmented. The officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an overall assessment of the performance of the subordinate officer. It should be founded upon the facts or circumstances. Though sometimes, it may not be part of record, but the conduct, reputation and character acquire public knowledge or notoriety and may be within his knowledge. Before forming an opinion to be adverse, the reporting/officers writing confidentials should share the information which is not a part of the record with the officer concerned, have the information confronted by the officer and then make it part of the record. This amounts to an opportunity given to the erring/corrupt officer to correct the errors of the judgment, conduct, behaviour, integrity or conduct/corrupt proclivity. If, despite given giving such an opportunity, the officer fails to perform the duty, correct his conduct or improve himself necessarily, the same may be recorded in the confidential reports and a copy thereof supplied to the affected officer so that he will have an opportunity to know the remarks made against him. If he feels aggrieved, it would be open to him to have it corrected by appropriate representation to the higher authorities or any appropriate judicial forum for redressal. Thereby, honesty, integrity, good conduct and efficiency get improved in the performance of public duties and standards of excellence in services constantly rises to higher levels and it becomes successful tool to manage the services with officers of integrity, honesty, efficiency and devotion. "

19. In the light of the above discussion this Tribunal proceeds to quash and set aside Annexure A/1 & A/2 appellate order ^{on the} ~~against~~ appeal preferred by the Applicant against A/1 APAR. Since the reviewing authority has made entries beyond the period specified in Annexure A/15 administrative instructions his remarks have to be ignored as he had already forfeited his right to enter the

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remarks beyond 31 August of the financial year concerned. In short, the whole of Annexure A/1 have to be quashed and set aside and has to be treated non-est in so far as the APAR of the applicant for the period between 01.04.10 and 14.10.10. This Tribunal does so. It is made clear that Annexure A/1 APAR and the appellate order in Annexure A/2 shall not be a bar for considering the applicant during the relevant period for promotion or for his entitlement for financial upgradation under MACP and also for any other purpose relating to his service.

20. O.A. is disposed of as above. Parties shall suffer their cost.



(U.SARATHCHANDRAN)
JUDICIAL MEMBER

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