

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 278/2011

Thursday, this the 28th day of June, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

G.Umadevi,
W/o Suresh, Upper Division Clerk,
Passport Office, Malappuram. - Applicant

(By Advocate Mr Shafik M Abdulkadir)

v.

1. Union of India represented by
the Chief Passport Officer & Joint Secretary (CPV),
Ministry of External Affairs,
New Delhi-110 001.
2. The Under Secretary(PVA),
Ministry of External Affairs,
New Delhi-110 001.
3. The Passport Officer,
Passport Office, Goa,
Panaji-676 505. - Respondents

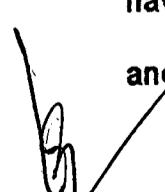
(By Advocate Mr A.D.Raveendra Prasad, ACGSC)

This application having been finally heard on 25.06.2012, the Tribunal on 28.06.2012 delivered the following:

ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

The challenge in this OA is that the applicant's annual confidential reports have not been properly evaluated, more so, when both the reporting authority and the reviewing authority happened to be one and the same.



Brief facts The applicant is presently working as Upper Division Clerk in the Passport Office at Malappuram under the second respondent. Earlier, she was serving at the Passport Office at Goa. On 29 - 03 - 2006 she had been served with some Charge Memo which she had responded to and ultimately some penalty was imposed upon her on account of certain proved misconduct vide Annexure A-3 order dated 17 - 03 - 2008.

2. For the years 2006 - 07 and 2007 - 08 when the applicant was serving at Goa, she had furnished her self appraisal part of the Annual Confidential Report, to the reporting officer. The reporting officer had, against column "Does the Reporting Officer agree with the information provided by the official in part I" recorded his view in affirmative(stating 'Yes'). However, against entry at serial number 15, "integrity", the reporting officer had reflected "doubtful". In addition, over all average report only had been given by the Reporting Officer.
3. In respect of personal attributes and performance for the two years, the reporting officer had given certain marks which is a blend of both good and average. For the year 2007 - 08 the confidential report also contains the remarks "**Reviewing Officer and Reporting Officer is same**". Though such a remark has not been reflected in the other confidential report, the signature at the two places meant for Reporting and Reviewing officers, is one and the same.
4. Being of average grading, the two confidential reports were to be communicated to the applicant within certain stipulated time: however, these two have been informed the applicant only on 10-11- 2009. The applicant had promptly made a representation against the same vide representation dated 19.11.2009 followed by a comprehensive representation dated 26-11-2009.
Annexure A-4 and A-5 refer.

5. Respondents have rejected the representation and declined to upgrade the grading and stated that the grading given in the two ACRs would be final. It is against the same that the applicant has moved this OA, seeking the following beliefs:

- (i) To call for the records relating to Annexure A-1 to A-5 and to quash A-1 and A-2 being illegal and arbitrary.
- (ii) To issue such other appropriate orders or directions this Hon'ble Court may deem fit, just and proper in the circumstances of the case.

6. Respondents have contested the OA. They have stated that communication of the adverse remarks (below the benchmark) was made to the applicant for the year is 2006-2007 and 2007-2008 on the basis of DoPT OM dated 13-04-2010 and 27-04-2010. It has also been stated that consistently in the previous years also the applicant had been given only an average report. It is also alleged that the applicant had committed several malpractices and irregularities involving money transaction and she was immensely benefited without the knowledge of the Department. All these illegalities where explored and brought out by the CBI. Various details in regard to the same have also been indicated in the reply. The respondents have also stated that during the material point of time the Passport Office at Goa had only one Passport Officer and that is the reason as to why the reporting and reviewing officer happened to be one and the same.

7. The applicants has filed her rejoinder reiterating all her contentions as contained in the original application and refuted various allegations against her made by the respondents in their reply. As regards the Reporting and Reviewing officers being one and the same the applicant has stated that the reason given



could hardly be accepted.

8. Counsel for the applicant highlighted the legal inaccuracy in the writing of the ACR in respect of the following: -

(a): entry against the column "integrity" has to be duly supported when the same happens to be adverse. In this regard the counsel had invited the attention of the tribunal to the principles to be observed by reporting officers in writing reports as contained in page 816-7 of swamis complete manual on establishment and administration 2006 edition.

(b) as regards the authorities competent to report and review, the applicants counsel had invited a reference to office memorandum dated 30 – 03 – 2011 in which there are four states that the report should be own officer and reviewed by another officer. Insofar as the applicant is concerned, the reporting officers should be PGO/APO/ DPO/PO file it is the head of office which would be the reviewing officer.

© when the reporting officer endorsed the self appraisal wherein the applicant has clearly stated as to her performance during the periods in question that she had discharged the duties entrusted upon her without any fee, sincerely and honestly and when this endorsement has been accepted by the reporting officer by recording "yes" against the relevant column, endorsing adverse entries would be nothing.

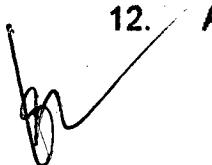
9. Counsel for the respondents submitted that the records of the applicant have not at all been clean. He has referred about the illegalities committed and also Annexure A-3 Memorandum. As regards the Reporting and Reviewing officers the counsel had reiterated the contention that a relevant point of time only one officers functioning at Goa and it was he who supervised the performance of the applicant. He has also stated that there is no provision for any Accepting Authority in the respondents organisation.

10. Arguments were heard and documents perused. The purpose of writing confidential reports is only to reflect the performance during the relevant period and also to highlight any deficiencies present in the performance during the relevant period. This is a form of a 'Curve Corrector' so that the performance of

the individuals could improve. Viewed from this point, none of the Past conduct could be brought into consideration much less such conduct which could influence in reflecting the performance of an individual by creating prejudice in the minds of the authorities concerned. In the instant case, as per the respondents the applicant's performance has been poor during the relevant point of time which is evident from the fact that the applicant was issued with a penalty advice, vide annexure A-3. A perusal of the same would reflect that the chargesheet issue to the applicants was dated 29 - 03 - 2006, a period which does not come within the period of the confidential reports. As such the content respondents in this regard has to be ignored.

11. As regards the Reporting and Reviewing officers being the same, the communication brought out by the counsel as to the necessity of two different officers to perform as Reporting and Reviewing Officer, is dated 30-03-2011 and the two ACRs relate to period anterior to the above said date. Nevertheless, two Heads are required to assess the performance and in the instant case, it is only one officer who had reported as well as reviewed the report. The provision relating to two officers (Reporting and Reviewing Officer) to address the ACR, from the reporting officer would be rendered otiose, if the two authorities happen to be one and the same. Maintenance of two levels is an absolute necessity and where there be no reporting officer, the reviewing officer could no doubt perform the duties of reporting officer in which event the same shall have to be reviewed by an officer above the reviewing officer. G.I, Department of Personnel & Training OM No. 21011/8/85-Estt (A) dated 23 - 09 - 1985 (Page 813 of Swamy's Complete Manual on Establishment and Administration Tenth Edition Refers).

12. As to the report of the Reporting Officer, there is substance in the



contention of the counsel for the applicant when he has stated that when the Reporting officer answered in affirmative endorsing on the self appraisal and when the self appraisal did not mean anything adverse, there is no meaning in endorsing negative points in matters of integrity as also on other items. It would have been a different matter, had he first recorded his disagreement and then continued to point out the extent to which he is disagreeing.

13. As regards remarks under the column 'Integrity', the duty of the Reporting Officer is to keep in mind the instructions on the subject. In fact, a suitable caution has also been administered in the very Format of the ACR by providing under the said column, (Please refer to Note of Instructions in this Regard). The note of instructions, as contained in the Establishment Manual read inter alia as under:-

"16. Principles to be observed by Reporting Officers in writing reports – The general principles which are required to be observed by the Reporting Officers for writing annual reports are indicated below-

(1) Remarks like "Doubtful character", "complaints received about his taking illegal gratification", are not permissible. Entries should be based on established facts and not on mere suspicion.

(2) No employee should be adversely affected by prejudicial reports recorded without fullest consideration. At the same time, none should be rewarded by excessively flattering reports which are not based on facts. With a view to checking up such possibilities, the following procedure is prescribed:-

(a) the memo of services should invariably be consulted at the time of writing the annual report though the report itself should necessarily be based on the employee's performance during the year as a whole;

(b) where an adverse remark is recorded in respect of an official having consistently good record, some details regarding the same should invariably be given;

(c) the report should give a clear opinion on the main points like character, integrity, industry, etc;

(d) there should be no hesitation on the part of the Reporting Officers to record adverse remarks in justified



cases;

(e) *Reporting Officers should not be in a hurry to write all the reports on one day.*"

14. It is to be noted that there had been no negative remarks about integrity in the earlier years' ACRs. At least nothing has been brought to the notice of the Tribunal. If so, vague remarks, without supporting documents, touching upon the integrity column, stating the integrity is 'doubtful' cannot be accepted. Integrity column has to be met with a high degree of delicacy and more accurately, without giving any room for surmises or conjectures. Sweeping adverse remarks on integrity, especially if these are based on certain complaints, cannot be accepted as legal. (See *Pawan N. Chandra v. Rajasthan High Court*, (2009) 17 SCC 770)

15. Thus, the impugned orders Annexure A-1 and A-2 whereby the request of the applicant to expunge the adverse remarks and upgrade the same has been rejected for the two years, 2006 – 07 and 2007 – 08, have to be quashed and set aside and the Confidential Reports (or Annual Performance Appraisal Report) are to be held as not in conformity with the requirement as per the laid down procedure. It is so ordered. The reports are either to be properly reviewed by an authority who had functioned as the Reviewing authority (or above the reviewing authority in case the reviewing authority happened to function as Reporting Authority) and who had the opportunity to watch the performance of the applicant during the relevant period or else, the two reports are to be treated as non est and for these two years, the reports of preceding/succeeding years have to be taken into account. (Under the normal circumstances, it would have been the previous years' report that would have been considered but the same would, in this case not followed, as it is stated that the earlier reports were also average and the same being lower than the Benchmark, having not been communicated, would pose some problems in

future). Thus, more appropriate is to treat the grading for the year 2006 – 07 and 2007 – 08 as provided for in the next succeeding year i.e. 2008 – 09.

16. On a pointed question, as to whether some officer above the Reviewing Officer who was at the material point of time functioning and who would have the occasion to supervise proximately or remotely the performance of the applicant, the counsel for the respondents fairly submitted that there could not be any one as Goa office being only a Passport Office, there would have been no other officer higher than the Passport Officer there.

17. In view of the above position, the only plausible solution to this case is to treat the two ACRs for 2006-07 and 2007 – 08 as non est and these two periods should be covered on the basis of the reports for the year 2008-09. Ordered Accordingly. Respondents are directed to place a copy of this order in the ACR Dossiers. The O.A is disposed of as above.

18. Under the above circumstances, there shall be no orders as to costs.



Dr K.B.S.RAJAN
JUDICIAL MEMBER

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