

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 507 of 2012

Reserved on 25.7.2014

Pronounced on 8th August, 2014

Hon'ble Ms. Jayati Chandra, Member-A

K.K. Bansal, Deputy Director, National Water Development Agency, 4/193-F Vishal Khand, Gomti Nagar, Lucknow.

.....Applicant

By Advocate : In person

Versus.

1. Union of India through the Secretary, Government of India, Ministry of Water Resources Shram Shakti Bhawan, New Delhi.
2. Director General, National Water Development Agency, 18-20 Community Center Saket, New Delhi.
3. Sri N.K. Bhandari, Ex-Chief Engineer (HQ) NWDA, present working as Secretary, Sardar Sarovar Construction Advisory Committee, Nrmada Bhawan, Indira Avenue Road, Vadodara Gujrat.

.....Respondents.

By Advocate : Sri Anil Mishra

O R D E R

The applicant has initially filed this O.A. under Section 19 of Administrative Tribunals Act, 1985 seeking following relief(s):-

- (i) to exclude from considerations the annual confidential report from 1.4.2003 to 31.3.2004 where the applicant does not meet the bench mark for promotion to SE/Financial up-gradation through MACP as the above ACRs were written without any authority and also not communicated to him for representation.
- (ii) to quash the grading "Good" recorded by the respondent in the ACR for the period 1.4.2005 to 31.3.2006 and 1.4.2006 to 31.3.2007 which does not meet the bench mark for the promotion to SE/financial up-gradation through MACP. As the above ACR was intentionally downgraded from Very Good to Good by insertion of an arrow mark, over writing and cutting.]
- (iii) to quash and set-aside the office memo no. 6/7/2011-Admn/13460 dated 9.11.2011 (Annexure 10). By these

- (iv) to quash and set-aside MOWR Office order no. 16/17/2009 Estt-IV/1048 dated 11th July, 2013 (Annexure 23). By these order an appeal of the applicant have been rejected and communicated on the subject.
- (v) to direct the respondent to grant 3rd financial up-gradation from 1.9.2008 with all arrears of pay.
- (vi) to allow the O.A. with exemplary cost.
- (vii) to pass such other and further order which their lordships of this Hon'ble Tribunal deemed fit and proper in the existing facts and circumstances of the case."

2. The applicant, who is appearing in person, stated that he presses relief nos. (ii), (iii) and (iv) only by this O.A.

3. The case of the applicant is that he was given initially 'Very Good' entry for the year 1.4.2005 to 31.3.2006 by the Reporting Officer. However, his 'Very Good' entry recorded for the year 2005-06, has subsequently been changed to Good through insertion of an arrow mark, overwriting and cutting and further the ACR for the year 2006-07 has been graded 'Good' without considering the self appraisal of the applicant. More-over, the ACRs entries were not based upon objective assessment of self assessment given by him. It is averred that the gradings given in the ACRs for the year 2005-06 and 2006-07, which were below the bench mark for selection for higher posts, were communicated to the applicant through letter dated 24.3.2011. The applicant, vide letter dated 11.4.2011, represented to the respondents against the below bench mark grading with a request to upgrade his ACRs (Annexure-9), which was rejected vide letter dated 9.11.2011 by passing a non-speaking order. Against that, the applicant filed an appeal before the appellate authority namely Secretary, Ministry of Water Resources, New Delhi on 8.2.2012, which was also summarily rejected vide order dated 1.10.2013.

4. The applicant has challenged both the impugned orders on the ground of being non-speaking and against the instructions of DoP&T O.M. dated 14.5.2009 and Rule 8(2) of AIS (CR) Roll, Rules, 1970 which reads as under:-

"(iii) In case where an entry is down graded or upgraded the authority downgrading or upgrading the remarks and overall grading should state as a part of the entry, the

reasons for downgrading or upgrading with adequate justification in accordance with the instructions of the ACR.

(iv) Where the authority has upgraded/down graded the overall grading without giving sufficient reasons, the Government shall treat such an exercise as non-est/invalid."

The appeal of the applicant was rejected by respondent no.1 purely on the ground that as per DoP&T O.M. dated 31.1.1978 only one representation against adverse remarks is allowed, which has already been availed of by the applicant. This is a wrong interpretation of the DoP&T guidelines as the representation dated 11.4.2011 was the initial representation not to be confused with an appeal. These entries are marked for selection for 3rd pay upgradation. As such, in terms of Rule 23 of CCS (CCA) Rules, he is entitled to make an appeal.

5. The respondents have contested the claim of the applicant by filing Counter Reply. They have denied the averments of the applicant on the ground that the grading given to the applicant is based on his work for the financial year and therefore, the grading given to the applicant is totally a reasoned one and based on correct assessment. These gradings were given on the basis of overall assessment of the work and worth as disclosed by the applicant in his self assessment. Therefore, the first impugned order has been passed on the material available on record. The second impugned order is also based on facts. The Reporting officer had forwarded the representation of the applicant vide letter dated 20.7.2011 for his comments and after taking comments so given by the Reviewing Officer, the representation of the applicant has been turned down. As per the DoP&T O.M. dated 31.1.1978 only one representation against an adverse remarks is allowed, hence the impugned orders are justified and valid and, therefore, no interference is called for.

6. Rejoinder has also been filed by the applicant refuting the averments of the respondents made in Counter Reply and reiterating the stand taken in the Original Application.

7. Heard the learned counsel for the parties and have also perused the material available on record.

8. It is clear from both the impugned orders that these are non-speaking and cryptic orders without disclosing any ground for such rejection. There are number of orders passed by the DoP&T which clarify that the purpose and intention of writing of ACR of an employee apart from being an assessment of functions and functioning of the employee is also to give an opportunity to improve his functioning. In this light, if any representation is made by an employee against down grading ACR or adverse remarks, then it is incumbent upon the authority concerned to apply his mind after considering the over all assessment his work and pass a reasoned and speaking order detailing all the points raised by an employee in his representation. The Hon'ble Supreme Court has repeatedly held that the authority empowered to take a decision on any representation should pass a reasoned and speaking order on the representation/appeal. The Hon'ble Apex Court in the case of **Ram Chandra Vs. Union of India reported in (1986) 2 SLR 608**, has observed that the "**Appellate authority is under obligation to record reasons to its decision.**

9. In view of the above, O.A. is partly allowed. The appellate orders dated 9.11.2011 and 11.7.2013 are quashed. The matter is remitted back to the respondent no. ^{3,th} 2 to consider and decide the representation dated 11.4.2011 through a reasoned and speaking order keeping in mind the ratio laid down by Hon'ble Supreme Court in the case of Ram Chandra (supra). The above exercise shall be completed within a period of four months from the date of receipt of copy of this order. No costs.

J. Chandra

(Ms. Jayati Chandra)
Member-A

Girish/-