

Central Administrative Tribunal, Lucknow Bench,

Lucknow

Original Application No. 330/2009

This the 14/5 day of May, 2010

Hon'ble Dr. A.K. Mishra, Member(A)

Lal Jee Verma, Aged about 54 years, S/o Sri Soney Lal Verma, R/o 2/128 Rashmi Khand, Sharda Nagar, Lucknow.

.....Applicant

By Advocate: Sri Amit Chandra.

Versus

1. Union of India through its Secretary Agriculture, Ministry of Agriculture & Indian Council of Agriculture Research (ICAR) New Delhi.
2. Director, Indian Institute of Sugarcane Research, Rai-Bareilly Road, Lucknow.
3. Senior Administrative Officer, Indian Institute of Sugarcane Research, Rai-Bareilly Road, Lucknow.

.....Respondents

By Advocate: Sri Deepak Shukla.

ORDER

This application has been made with a prayer to set aside the order dated 4.7.2009 in which his representation against adverse entries in his Annual Confidential Reports (ACR) was rejected. He has made a further prayer for a direction to the respondents to give him promotion to the higher rank of T-5 from the date his juniors were promoted.

2. The applicant had earlier filed O.A. no. 197 of 2005 in respect of his grievance of non-promotion to the Grade of T-5. The Application was finally disposed of on 19.3.2009 with the following directions:-

by

"To communicate all the remarks in his ACRs from 2002-03 onwards which were utilized in denying him promotion within one month from the date of this order. The applicant may file representation against these remarks within one month thereafter, in case, the remarks are expunged and there is need for holding a meeting of the Review DPC, the same may be held within three months thereafter."

Accordingly, adverse remarks as contained in his ACRs for the years 2002-03 upto 2007-08 were communicated to the applicant by the respondent-authorities. He made a representation against these remarks on 1.6.2009. His representation was rejected in the impugned order; hence the Application.

4. At the time of hearing, the learned counsel for the applicant submits that the impugned order does not reveal application of mind and has been passed without giving reasons why the grounds taken in his representation were not properly considered. The learned counsel for the respondents submits, in reply, that the adverse entries related to statement of facts about non-furnishing of details of work done by the applicant during the years under report in part II of ACRs which relates to self appraisal note of the officer concerned. This is a statement of fact and the applicant has not denied this fact in his representation; therefore, there was nothing which required detailed reasoning for rejection of his representation. In this connection, he placed reliance on the decision of Supreme Court reported in **1991 (3) SCC 38 Union of India & Others Vs. E.G. Nambudiri** and the judgment of Supreme Court in the case of **Bharat Ram Meena Vs. Rajasthan High Court at Jodhpur & Others reported at (1997) 3 SCC 233**. In the former case, the Supreme Court held that an order rejecting a representation against adverse entries in ACR should not be interfered with simply on the ground that reasons were not recorded. The Supreme Court set aside the order of Central Administrative Tribunal, which was passed on the ground that orders passed on the representation of an employee against adverse entries were vitiated in law in absence of reasons.

5. However, the Supreme Court further observed that right to reason is an undisputed part of judicial system of review and administrative actions are subject to judicial review; therefore, it was desirable that reasons should be stated not necessarily in the order itself. But if any challenge is made to the validity of an order on account of it being arbitrary or malafide, it was always open to the

authorities to place the reasons available in the office records before the Court. In the second case, the Apex Court held that if the entries are not arbitrary and not without factual basis, judicial review is not called for

6. Be that as it may, for better appreciation the adverse entries as communicated to the applicant are reproduced below:

Sl. No.	Year	Adverse Remarks
1.	2002-03	<i>Sri Lal Ji Verma submitted the annual assessment proforma for the year 2002-03 without filling the prescribed portions/columns in part II, due to which it is not possible to access the performance of the work in Part-III & IV. Moreover, he has given a vague statement which is indicate of not attending the work by him in right spirit. Further, he has shown in different attitudes during the reported period which he wants to conceal through such statement.</i>
2.	2003-04	<i>Information required vide Part-II item 1 & 2 not furnished by the office reported upon and the performance has been assessed without relevant material.</i>
3.	2004-05	<i>Yes, I am satisfied the officer reported upon, should have furnished Self Appraisal report/work performance during the reported period.</i>
4.	2006-07	<i>The officer reported upon has not given any comments regarding description/performance of his duties during the reporting period as required vide Part -II. Therefore, it is not possible to give any remarks about his work assessment.</i>
5.	2007-08	<i>The officer reported upon has not given any comments about his work performance as required in part -II. Therefore, it is not possible to give any remarks as required in part III.</i>

7. It is, as argued by the learned counsel for the respondents, a statement of fact about non-furnishing of Self Appraisal note by the applicant during the five years from 2002-03 to 2007-08. The representation, which is filed at Annexure 31 of the O.A., does not controvert the fact of his non-furnishing the details of work done during the years under report. He has mentioned about some survey work conducted by him in the village of District Maharajganj and referred to some report submitted by him in that connection. He has mentioned in general about the work he was doing in Block II of agricultural farm. But he does not specifically deny that he had not furnished anything about his work or performance during the years by way of Self Appraisal note; therefore, the entries were not arbitrary

and not without factual basis. On facts, the respondent-authorities came to the conclusion that the remarks for those years should stand.

8. From the foregoing discussions, I do not find any justification to interfere with the order passed by respondent-authorities.

9. In the result, this Application fails and it is accordingly dismissed. No costs.

May 21
(Dr. A.K. Mishra)
Member-A

Girish/-