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**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

09.05.2012

OA No. 419/2010

Mr. C.B. Sharma, Counsel for applicant.
Mr. V.K. Pareek, Counsel for respondents.

On the request of the learned counsel for the applicant, list it on 11.05.2012.

Anil Kumar
(Anil Kumar)

Member (A)

K.S. Rathore
(Justice K.S. Rathore)
Member (J)

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11/05/2012

OA No. 419/2010

Mr. C.B. Sharma, Counsel for applicant.
Mr. V.K. Pareek, Counsel for respondents.

Heard.

O.A. is disposed of by a
separate order on the separate
Sheets for the reasons recorded
therein.

Anil Kumar
[Anil Kumar]
Member (A)

K.S. Rathore
(Justice K.S. Rathore)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 11th day of May, 2012

ORIGINAL APPLICATION No. 419/2010

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

S.R. Kamde son of Shri Babu Rao Kamde aged about 59 years, resident of 349, Sector-2, Vidyadhar Nagar, Jaipur and presently working as Director, M &A Directorate, Central Water Commission, Sector 10, Kendriya Sadan Block A, Vidyadhar Nagar, Jaipur.

... Applicant

(By Advocate: Mr. C.B. Sharma)

Versus

1. Union of India through Secretary, Government of India, Ministry of Water Resources, Shram Shakti Bhawan, 311, Sewa Bhawan, R.K. Puram, New Delhi.
2. Chairman, Central Water Commission, Sewa Bhawan, R.K. Puram, New Delhi.

... Respondents

(By Advocate: Mr. V.K. Pareek)

ORDER (ORAL)

The applicant has filed this OA praying for the following reliefs:-

- "(i) That the respondents be directed to upgrade, grading of the applicant as very good or above instead of good for the period 01.04.2005 to 31.03.2006 and 20.06.2006 to 31.03.2007 by treating the grading as Bench mark grading by quashing order dated 10.08.2010 (Annexure A/1) with all consequential benefits.
- (ii) That the respondents may be further directed not to take into account the below Bench mark grading while considering the applicant for promotion to the cadre of Chief Engineer with all consequential benefits.
- (iii) Any other order/directions or relief may be granted in favour of the applicant which may be deemed just and proper under the facts and circumstances of the case.
- (iv) That the cost of this application may be awarded."

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2. Learned counsel for the applicant argued that this application is made against the order dated 10.08.2011 (Annexure A/1) by which the representation of the applicant against below bench mark grading in the ACRs has been rejected without due consideration and the grading recorded by the Reporting Officer as well as Reviewing Officer have been held 'Good' for the period from 01.04.2005 to 31.03.2006 and 20.06.2006 to 31.03.2007. He submitted that respondents communicated the below bench mark grading in the ACR for the above period vide their letter dated 18.05.2010 (Annexure A/6). Thereafter, the applicant submitted a detailed representation with full facts justifying for upgrading the ACR from below bench mark to the bench mark i.e. 'Very Good'. But respondent no. 2, who is holding the post of Chairman since 2008 was annoyed with the applicant due to approaching the Hon'ble Principal Bench, New Delhi and National Commission for SC against transfer to Coimbatore and respondent no. 2 was personally called for by the National Commission. So in view of this position, respondent no. 2 rejected the representation of the applicant without any due consideration. That prior to the year 2005-2006 and 2006-2007, the applicant was always graded upto the bench mark or above the bench mark and even in the subsequent years i.e. 2007-2008, 2008-2009 and 2009-2010 also, he has been given the grading upto the bench mark or above the bench mark. He was never informed about any shortcoming in his work and instead of this, below bench marks grading have been recorded for the year 2005-2006 and 2006-2007. That the applicant was given no chance of hearing prior to the recording of grading 'Good'. He further argued that all the adverse entries recorded are cursory and unfounded. That the applicant is

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performing his duties with full devotion but the grading in his ACRs has been recorded as 'Good' with the sole intention to spoil his carrier. He referred to the detailed representation of the applicant dated 08.06.2010 (Annexure A/7). To support his averments, he referred to the following case laws:-

- (i) Dev Dutt vs. Union of India & Others
2008(2) SCC (L&S) 771.
- (ii) Abhijit Ghosh Dastidar vs. Union of India & Others
2010 (1) SCC (L&S) 959
- (iii) Pawan Chandra vs. Rajasthan High Court & Another
2011 (1) SCC (L&S) 478
- (iv) Er. R.K. Rangra vs. Secretary, Ministry of Defence and Another
Swamy News March 2010 Page 50
(Chandigarh) OA No. 3/2010 Date of judgment 30.07.2009

3. He further argued that in view of the facts & circumstances of the case and in view of legal position, the OA be allowed and the ACR for the period from 01.04.2005 to 31.03.2006 and 20.06.2006 to 31.03.2007 be graded as 'Very Good' and the applicant should be allowed all consequential benefits.

4. On the contrary, learned counsel for the respondents raised the preliminary objection that the applicant has not come before the Hon'ble Tribunal with clean hands. He has concealed the material fact. He has wrongly stated that the period of ACR from 20.06.2009 to 31.03.2007 is less than nine months. He further argued that by the action of the respondents, no legal or fundamental right of the applicant has been violated. Hence this OA is liable to be dismissed as not maintainable.

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5. He further denied the allegation that respondent no.2 was annoyed with the applicant on approaching the Hon'ble Principal Bench, New Delhi and National Commission for SC against the transfer to Coimbature. He argued that he was considered for promotion for the post of Chief Engineer but he was not found fit. He argued that the Reporting as well as Reviewing Officer have assessed the applicant with due care. The submission of the applicant that the grading 'Good' has been given without any basis is not correct. The Reporting Officer has given only 'Satisfactory' remarks in the column 'Control and Management of Staff and relationship with colleagues' for the ACR of 2005-2006 and 2006-2007 and overall grading has been given as 'Good'. The Reviewing Officer has stated that he is satisfied and agrees with the report given by the Reporting Officer including the assessment and grading. The Reporting Officer has given 'Good' remarks against most of the Paras and the Reviewing Officer has agreed with the ACR therewith for the ACR 2005-2006 and 2006-2007.

6. He further argued that as per the Government Rules, prior to April, 2010, there was no provision to communicate the ACR grading to the officer and only adverse remarks were communicate. Therefore, the grading in the ACR for the period 2005-2006 and 2006-2007 was not communicated to the applicant. However, the same was communicated as per the provisions of the DOPT OM No. 21011/1/2010-Estt.A dated 13.04.2010 and he was given opportunity to represent. The applicant filed a representation against both the ACRs for upgradation. The representation of the applicant has been duly considered by the respondents after following the due process of

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law and procedure laid down vide DOPT OM No. 21011/1/2010-Estt. A dated 13.04.2010, considering all facts mentioned in the representation. He referred to the order dated 10.08.2010, which is the order of the competent authority, rejecting the representation for upgrading the ACR for the year 2005-2006 and 2006-2007. He pointed out that the bare perusal of this order would reveal that it is a speaking and reasoned order and the points raised by the applicant in his representation have been duly considered by the competent authority and therefore, there is no infirmity/illegality in this order. The applicant is not entitled to any relief in the present OA and, therefore, it should be dismissed.

7. Heard learned counsel for the parties and perused the relevant documents on record. It is not disputed that the applicant was communicated the ACR for the period from 01.04.2005 to 31.03.2006 and 20.06.2005 to 31.03.2007 vide order dated 18.05.2006 (Annexure A/6) as per the provisions of the DOPT OM No. 21011/1/2010-Estt.A dated 13.04.2010. The Hon'ble Supreme Court in the case of **Dev Dutt vs. Union of India & Others** (supra) has held that all the grading whether 'very good', 'good', 'average' or 'poor' is required to be communicated to the employees working in government offices, statutory bodies, public sector undertakings, or other State instrumentalities where constitutional obligations and principles of natural justice and fairness apply. Grading should be communicated within a reasonable period so that the employee concerned gets an opportunity of representation for improvement of his grading. Hon'ble Supreme Court further held that the representation be decided fairly

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and within a reasonable period by an authority higher than the one which made the entry.

8. The Hon'ble Supreme Court in the case of **Abhijit Ghosh Dastidar vs. Union of India & Others** (supra) has reiterated the law laid down in Dev Dutt's case.

9. In this case, the respondents followed the ratio as laid down by the Hon'ble Supreme Court and communicated the two ACRs having grading 'Good', which was below the bench mark and the applicant was given opportunity to represent against it. The applicant gave a detailed representation dated 08.07.2010 (Annexure A/7). The competent authority after considering the representation of the applicant, rejected the same vide order dated 10.08.2010 (Annexure A/1). From the perusal of the above facts, it is clear that the representation was given on 08.06.2010, which was decided by the competent authority on 10.08.2010 i.e. almost within two months, which can be said to be a reasonable period for deciding the representation. We have gone through the order dated 10.08.2010 and we are of the view that respondent no. 2 considered all the points raised by the applicant in his representation and then decide it by a speaking and reasoned order. We find no infirmity/illegality in the order dated 10.08.2010 (Annexure A/1) passed by respondent no. 2. The respondents in their reply as well as during the arguments have categorically denied any malafide on the part of respondent no. 2 viz.a.viz applicant. Moreover, respondent no. 2 has not been made party by name against whom malafide/bias has been alleged by the

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applicant. Therefore, in our opinion, it cannot be said that the representation of the applicant has been rejected on the ground of malafide or bias. The ratio decided by the Hon'ble Supreme Court in the case of **Pawan Chandra vs. Rajasthan High Court & Another** (supra) is not applicable under the facts and circumstances of the present case. Similarly, the ratio decided by CAT Chandigarh Bench in the case of **Er. R.K. Rangra vs. Secretary, Ministry of Defence and Another** (supra) is also not applicable under the facts & circumstances of the present case.

10. Thus on the basis of above discussion, we are of the opinion that the applicant is not entitled for relief in the present OA. Consequently, the OA being devoid of merit is dismissed with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

K. S. Rathore
(Justice K.S.Rathore)
Member (J)

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