

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 08.01.2014

MA No. 372/2013 & MA No. 373/2013 (OA No. 283/2011)

Mr. Prahlad Singh, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondents.

MA No. 373/2013

Heard on the MA No. 373/2013 filed on behalf of the applicant praying for condonation of delay in filing MA No. 372/2013 for restoration of OA.

Having considered the submissions made on behalf of the parties, the delay in filing MA No. 372/2013 for restoration of OA, is condoned. Accordingly, the MA No. 373/2013 is allowed.

MA No. 372/2013

Heard on the Misc. Application No. 372/2013 filed on behalf of the applicant praying for restoration of Original Application No. 283/2011.

Having considered the submissions made on behalf of the respective parties, and the reasons stated in the Misc. Application for seeking restoration of the Original Application, I am fully satisfied with the reasons stated and, thus, the Misc. Application for restoration of the Original Application stands allowed. The Original Application is restored to its original number and status and is taken up for hearing today itself.

OA No. 283/2011

Heard learned counsel for the parties.

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

Anil Kumar

(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 283/2011

Jaipur, the 08th day of January, 2014

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

P.K. Kulshrestha son of Late Shri Rajendra Prakash, aged about 57 years at present working as Superintending Engineer (Planning), Office of the Chief Engineer, CPWD, Nirman Bhawan, Sector-10, Vidyadhar Nagar, Jaipur.

... Applicant

(By Advocate: Mr. Prahlad Singh)

Versus

1. Union of India through the Secretary, Ministry of Urban Development, Nirman Bhawan, New Delhi – 110 011.
2. Director General (CPWD), Nirman Bhawan, New Delhi.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

The present OA has been filed praying for the following reliefs:-

- (i) By an appropriate order or direction, this original application may kindly be allowed and Office Memorandums dated 16.6.2010 and 31.12.2010 (Annexure A/1 & A/2) may kindly be declared to be illegal and same may kindly be quashed and set aside and the confidential reports of the applicant for the period 1.9.05 to 31.3.06 and 1.4.06 to 31.3.07 may kindly be ordered to be graded or ordered to be read and treated as Very Good;
- (ii) By further appropriate order or direction the CR for the period 1.4.2002 to 25.2.2003 and 7.11.2001 to 31.3.2002 may kindly be ordered to be graded or ordered to be read and treated as Outstanding.
- (iii) By further appropriate order or direction the CR for the period 1.4.1998 to 31.3.1999 and 1.4.1999 to 31.3.2000 may kindly be ordered to be graded or ordered to be read and treated as Very Good.
- (iv) Any other appropriate order or direction which this Hon'ble Tribunal may deem just and proper in the

Anil Kumar

facts and circumstances of the case may kindly be passed in favour of the applicant.

- (v) Cost of this Original Application may kindly be awarded in favour of the applicant."

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that vide letter dated 16.06.2010 (Annexure A/1), the applicant was communicated his confidential report with below bench mark grading considered in the DPC for the period from 01.09.2005 to 31.03.2006 as 'Good' and for the period from 01.04.2006 to 31.03.2007 as 'Good'. He was given an opportunity to represent against the below bench entry. The applicant submitted the representation dated 25.08.2009 against the above OM (Annexure A/9).

3. The representation of the applicant has been rejected by the respondents vide communication dated 31.12.2010 (Annexure A/2).

4. The applicant got the copies of the Confidential Reports through RTI for the years 2002-03, 2001-02, 1999-2000 and 1999. The Confidential Reports for the above periods of the applicant has been graded 'Good' only, thus below benchmarks although they were never communicated to the applicant. The applicant submitted representation against the above Confidential Reports because they affect the applicant's career prospects but he has not received any decision on his representation.

Anil Kumar

5. The learned counsel for the applicant submitted that as per instruction No. 1 of writing the Confidential Reports, Confidential Report is an important document. It provides the basic and vital inputs for assessing the performance of an officer and for his further advancement of his career. The officer reported upon, the Reporting Authority, the Reviewing Authority and the Accepting Authority should, therefore, undertake the duty of filing the form with a high sense of responsibility (Annexure A/14). The learned counsel for the applicant further submitted that however, the Confidential Reports of the applicant for the above period have been written with irresponsible attitude of Reporting and Reviewing Officers. The reports are not performance based. The remarks in the Confidential Reports and grading do not reflect the true picture of performance and, therefore, it is clear that the Confidential Reports have been written at the whims of the officer concerned. It was the duty of the Reporting, Reviewing and Accepting (counter-signing) Officers to have graded the Confidential Reports on the basis of the performance of the applicant. Although there are no parameters fixed, demarcating the assessment of performance for grading the Confidential Reports as 'Good' or 'Very Good' but at the same time the Reporting, Reviewing and Accepting Authorities must fill the relevant columns of Confidential Reports with utmost care and caution and not at their whims.

6. The learned counsel for the applicant submitted that for the period from 01.09.2005 to 31.03.2006, the Reporting

Anil Kumar

Officer has agreed with the achievement of the applicant as have been mentioned by the applicant in the ACR Form but while grading him, the Reporting Officer has graded him only 'Good'. He has also submitted that for the first half of the same year i.e. 01.04.2005 to 31.08.2005, he has been graded as 'Very Good'. He drew my attention to the ACR of the applicant for the period from 01.09.2005 to 31.03.2006 (Annexure A/7). In column 3.1, which relates to point, Whether the Reporting Officer agrees with the answers relating to targets and objectives, achievements and shortfalls, the Reporting Officer has written 'Agree in general'. Therefore, he submitted that once the Reporting Officer has agreed with the performance of the Reported Officer then the Reporting Officer should not have given 'Good' grading. The applicant was entitled for 'Very Good' grading. The Reviewing and Accepting Officer have not correctly assessed the performance of the applicant and have graded him as 'Good'. He argued that on the basis of the applicant's performance, he should be graded as 'Very Good'.

7. For the period from 01.04.2006 to 31.03.2007, the learned counsel for the applicant stated that the applicant has been graded as 'Very Good' by the Reporting Officer. In Column No. 5.3 the Reviewing Officer has agreed with the assessment of the Reporting Officer including grading but there is anomaly in the grading in Column No. 5.6 done by the Reviewing Officer. The Reviewing Officer in Column No. 5.6 has stated that applicant's performance is good. The Reviewing Officer has also remarked that the applicant tends to take on

Anil Kumar

more than what he can handle is an uncalled for and unwarranted and without any documentary support. In Column No. 3.6, the Reporting Officer has commended that the applicant is open to take additional responsibilities. The higher achievement and additional responsibilities handled by the applicant as mentioned on column No. 2.3 of the Confidential Report has also been agreed by the Reporting Officer. Thus there is anomaly and self contradiction by the Reviewing Officer while grading him as 'Good'. In fact the applicant should be graded as 'Very Good', as done by the Reporting Officer.

8. With regard to the ACRs for the period from 01.04.2002 to 25.02.2003, 07.11.2002 to 31.03.2002, 01.04.1998 to 31.03.1999 and 01.04.1999 to 31.03.2000, the learned counsel for the applicant stated that these ACRs were below bench mark but they were not communicated to the applicant. He got the copies of the ACRs through RTI in August, 2009 and represented for upgradation of the ACRs but no decision has been taken by the respondents. This may adversely affect the applicant's promotional prospects. In support of his averments, the learned counsel for the applicant referred to the following judgments:-

- (1) Sukhdeo vs. Commissioner Amravati Division, Amravati and Another, 1996 SCC (L&S) 1141.
- (2) State of U.P. vs. Yamuna Shanker Mishra & Anr. JT 1997 (4) SC 1.
- (3) Sukhdev Singh vs. Union of India & Others JT 2013 (8) SC 270

Anil Kumar

9. On the other hand, the learned counsel for the respondents submitted that only below bench mark ACRs of the relevant period need to be communicated to the concerned employee. There is no need to send below bench mark of the other years. Therefore, the ACRs for the period 01.09.2005 to 31.03.2006 and 01.04.2006 to 31.03.2007 were communicated to the applicant to file representation. The ACRs for the period from 01.04.2002 to 25.02.2003, 07.11.2001 to 31.03.2002, 01.04.1998 to 31.03.1999 and 01.04.1999 to 31.03.2000 were not communicated to the applicant because they were not to be considered for promotion of the applicant for the post of Chief Engineer.

10. The learned counsel for the respondents further submitted that the representation dated 30.06.2010 requesting for the reviews of below bench mark grading was duly considered by the competent authority for the respective period on the basis of available material.

11. For the period from 01.09.2005 to 31.03.2006, the Reporting Officer has assessed the applicant as 'Good' in 11 attributes. In part 3 of the ACR, the applicant has not been assessed as 'Very Good' in any of the attributes. Regarding the 'Attitude of Work' (Column No. 3.4), it has been remarked that he needs persuasion from time to time. In Column No. 3.6 regarding 'Initiative', the Reporting Officer has written that applicant has capacity but need guidance. In Column no. 3.10, the Reporting Officer has stated that the officer has ability for

Anil Kumar

planning but needs directions to anticipate problems. He has further stated that the officer needs training in HRD for improving general and personnel management skills.

12. The Reviewing Officer has fully agreed with the assessment of the Reporting Officer and remarked that the applicant is a good officer.

13. The Counter Signing Officer accepted the report and has graded the applicant as 'Good'.

14. For the period from 01.04.2006 to 31.03.2007, the applicant has been graded 'Very Good' by the Reporting Officer in different attributes using generic expressions. In professional and technical competence, he has been assessed 'Good'. The Reviewing Officer has not mentioned any special characteristics merits or abilities and accordingly he has remarked the applicant to be 'generally a Good Officer'. The Reviewing and Accepting officers have graded the applicant as 'Good'.

15. The learned counsel for the respondents argued that since the Reporting and Reviewing and Counter Signing Officer were acquainted with the work, conduct and performance of the officer, the assessment of reviewing and counter signing officer is found to be in conformity and no apparent contradictions noticed. There is no prejudice or biased applicant the applicant. Considering all the facts stated in the representation and other material on record, the competent

Anil Kumar

authority had decided not to interfere with the grading for the period from 01.09.2005 to 31.03.2006 and 01.04.2006 to 31.03.2007 and decision taken by the competent authority was communicated to the applicant vide letter dated 31.12.2010 (Annexure R/3).

16. The learned counsel for the respondents also submitted that there is limited scope of judicial review in the case of upgradation of ACRs. Courts are not expected to play the role of Appellate Authority. To support his averments, he also referred to the orders of the Central Administrative Tribunal, Principal Bench, New Delhi in the case of **Rajiv Kumar vs. Union of India & Another** [OA No. 2948/2011 decided on 18.08.2011] and **Navin Kumar Garg vs. Union of India** [OA 292/2012 decided on 01.02.2012].

17. The learned counsel for the applicant has also filed a rejoinder.

18. Heard the learned counsel for the parties, perused the documents on record and perused the case law referred to by the respective parties.

19. It was agreed in principle by the learned counsel for the applicant that he is not insisting on the communication or upgradation of the applicant's below bench mark ACRs for the period from 01.04.2002 to 25.02.2003, 07.11.2002 to 31.03.2002, 01.04.1998 to 31.03.1999 and 01.04.1999 to

Anil Kumar

31.03.2000 if they are not being considered for promotion of the applicant to the post of Chief Engineer, as stated by the learned counsel for the respondents. Hence the prayer for upgradation of ACR for the period from 01.09.2005 to 31.03.2006 and from 01.04.2006 to 31.03.2007 are being considered.

20. I have carefully gone through the ACRs recorded by the Reporting Officer, Reviewing Officer and the Accepting Officer for the period from 01.09.2005 to 31.03.2006. From the perusal of this ACR, it appears that in Column no. 3.1, the Reporting Officer has written that "Agreed in general". This is with regard to comments of Part III to be filled in by the Reporting Authority and Reporting Officer is required to state whether he agrees with the answers relating to targets and objectives, achievements and shortfalls. In 11 other attributes, the applicant has been graded as 'Good' by the Reporting Officer. Under the Column No. 3.4, 'Attitude of work', the Reporting Officer has written "works systematically but needs persuasion from time to time". In Column "Initiative", it has been stated that the applicant has capacity but needs guidance. Similarly under the heading "Planning ability", it has been written that the applicant has ability for planning but needs directions to anticipate problems. Under the heading 'General Assessment', the Reporting Officer has written that applicant is well qualified, intelligent but needs sharpening for effective management tactics and finally has graded him 'Good'.

Anil Kumar

21. The learned counsel for the applicant stated that no warning/guidance/advice was given to the applicant prior of writing of below bench mark ACRs and to support his averments, he referred to the judgment of the Hon'ble Supreme Court in the cases of **Sukhdeo vs. Commissioner Amravati Division, Amravati and Another**, 1996 SCC (L&S) 1141 and **State of U.P. vs. Yamuna Shanker Mishra & Another**, JT 1997 (4) SC 1. In these judgments, the Hon'ble Supreme Court has held that before writing adverse remarks, prior opportunity in writing be given to the employee concerned, informing him of the deficiencies and time for improvement and if the employee does not improve inspite of the opportunity given to him, then that would material basis in support of the adverse remark. In this case, no such opportunity was given to the applicant. On the contrary, the learned counsel for the respondents submitted that the present case is not covered by the ratio decided by the Hon'ble Supreme Court. The present OA is not a case of adverse remark. The applicant has been graded 'Good'. There is no provision to communicate any advice or deficiency to the applicant for a below bench mark ACR. The below bench mark ACR are now communicated to the employee for making representation and giving them an opportunity to state their case before the competent authority. In this case also, below bench mark entry has been communicated and applicant has represented. His representation has been duly considered and rejected by the competent authority. I am inclined to agree

Anil Kumar

with the averments made by the learned counsel for the respondents that the ratio decided by the Hon'ble Supreme Court in these two cases i.e. **Sukhdeo vs. Commissioner Amravati Division, Amravati and Another**, 1996 SCC (L&S) 1141 and **State of U.P. vs. Yamuna Shanker Mishra & Another**, JT 1997 (4) SC 1, is not applicable in the present case. The Hon'ble Supreme Court has held that where adverse remarks is written, prior opportunity in writing be given to the employee concerned, informing him of the deficiencies and time be given for improvement but in this case, the applicant has been given below bench remarks as 'Good'. It is not the adverse remark in the ACR of the applicant. Therefore, the ratio decided by the Hon'ble Supreme Court is not applicable under the facts & circumstances of the present case.

22. From the perusal of the ACRs, it is clear that the applicant has been graded 'Good' on 11 counts and in none of the attributes, he has been graded as 'Very Good'. Even in Para No. 3.1, the Reporting Officer has graded "Agreed in General". The mere fact that the Reporting Officer has agreed in general with the self appraisal of the applicant, would not automatically mean that the applicant deserves to be graded as 'Very Good'. The Reviewing Officer and the Accepting Officer have also graded the applicant as 'Good'. Thus the applicant has been assessed at three different levels by three different officers. I do not find any reason to interfere with the order passed by the competent authority for rejecting the representation of the applicant for the period from 01.09.2005 to 31.03.2006, which

Anil Kumar.

has been communicated to the applicant vide letter dated 31.12.2010 (Annexure A/2). It is a reasoned and speaking order.

23. With regard to the period from 01.04.2006 to 31.03.2007, the applicant has been graded as 'Very Good' by the Reporting Officer. This fact has not been disputed by the respondents but the Reviewing Officer has given the following remark – "Officer is sincere and quick in work but tends to take more than he can handle. Generally a good Officer". At the same time, in column No. 5.3, which relates to 'Whether the Reviewing Officer fully agree with the assessment of the Reporting Officer including grading (in case of disagreement, please specify reasons and add your own comments), he has stated that "Yes I agree". In column No. 5.4 which relates whether the Reviewing Authority is satisfied that the Reporting Authority has made his/her report with due care and attention and after taking into accounts all the relevant material, the Reviewing Officer has stated "Yes". The competent authority while deciding the representation of the applicant for this period has taken the following decision:-

"The Reporting Officer has given a 'Very Good' grading but the Reviewing and Accepting Officer have downgraded the assessment to 'Good'. The representation states that remarks of the Reviewing Officer in Col. 5.6 are uncalled for and unwarranted but no reason or ground has been given for making such allegation. In fact, in para 5.6, the Reviewing Officer has given the reason for downgrading."

24. From the perusal of the ACR, it is clear that the Reviewing Officer in Column No. 5.3 has agreed with the

Anil Kumar.

assessment of the Reporting Officer including grading. If the Reviewing Authority did not agree with the grading given by the Reporting Officer then he could have specified the reasons and added his own comments in Column no. 5.3 itself. Not only this but also in column no. 5.4, the Reviewing Officer has specified that the Reporting Officer has made his comments with due care and attention and after taking into accounts all the relevant material. Thus after being satisfied on these two counts, the Reviewing Officer should not have downgraded the grading of the applicant. He himself has stated that the officer is sincere and quick in work but tends to take on more than he can handle. Generally a good officer. The applicant's grading should not have been downgraded to be a 'Good' Officer. The Reporting Officer has graded the applicant as 'Very Good' on 9 parameters and has also graded him 'Very Good' under the Column 3.6 -Initiative. The Reporting Officer has stated that the applicant is open to take additional responsibilities. This is a positive quality as communicated in the ACR Form but the Reviewing Authority has taken it as a negative quality that he tends to take more than what he can handle. This alone cannot be the criteria for downgrading the performance of the applicant.

25. It is not disputed that the Reviewing Officer can downgrade the performance of an employee, disagreeing with the grading given by the Reporting Officer but for doing so, he has to report specific reasons, as has been mentioned in Column 5.3 of the ACR Form. In the present case, the

Anil Kumar.

Reviewing Officer has not given any specific reason for disagreeing with the views of the Reporting Officer. On the contrary, the Reviewing Officer in Column No. 5.3 has agreed with the assessment of the Reporting Officer including grading. Therefore, under these circumstances, the downgrading of the ACR of the applicant from 'Very Good' to 'Good' by the Reviewing Officer does not hold good.

26. Similarly, the Accepting Officer has graded the applicant as 'Good' Officer without giving any reason for disagreement with the grading given by the Reporting Officer.

27. The learned counsel for the respondents submitted that there is limited scope of judicial review in the case of upgradation of ACRs. Courts are not expected to play the role of Appellate Authority. To support his averments, he also referred to the orders of the Central Administrative Tribunal, Principal Bench, New Delhi in the case of **Rajiv Kumar vs. Union of India & Another** [OA No. 2948/2011 decided on 18.08.2011] and **Navin Kumar Garg vs. Union of India** [OA 292/2012 decided on 01.02.2012]. I agree in principle with the remarks of the learned counsel for the learned counsel for the respondents that the Tribunal has limited power of review in such cases but in this particular case, for the reason stated above, I find good and sufficient reason to interfere with the decision taken by the respondents with regard to downgrading the ACRs of the applicant. Thus the orders referred to by the learned counsel for the respondents in the case of **Rajiv**

Anil Kumar.

Kumar vs. Union of India & Another [OA No. 2948/2011 decided on 18.08.2011] and **Navin Kumar Garg vs. Union of India** [OA 292/2012 decided on 01.02.2012] are not applicable in the facts & circumstances of the present case. Therefore, on the basis of the above discussion, I direct the respondents to treat the ACR of the applicant for the period from 01.04.2006 to 31.03.2007 as 'Very Good'.

28. With these observations & directions, the OA is disposed of with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

AHQ