

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

27.03.2014

OA No. 24/2012

Mr. C.B. Sharma, Counsel for applicant.
Mr. Manish Singh Tomar, Proxy counsel for
Mr. M.S. Raghav, Counsel for respondents.

The learned counsel for the applicant submits that he does not wish to file rejoinder. Thus the pleadings are complete.

List it for hearing on 15.04.2014.

Anil Kumar
(Anil Kumar)
Member (A)

ahq Date - 15/4/2014

*Mr. C. B. Sharma Counsel for applicant
Mr. S.S. Raghav proxy counsel for
Mr M.S. Raghav Counsel for respondents*

Case adjourned on the request of
learned counsel for respondent
23/4/2014

23/4/2014

[Signature]

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

Original APPLICATION NO.: 24/2012

Applicant(s)

Respondent (s)

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

23/04/2014

Mr. C.B. Sharma, Counsel for applicant.
Mr. M.S. Raghar, Counsel for respondents.

Heard learned Counsel for the parties.

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

Anil Kumar
[Anil Kumar]
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 24/2012

Date of Order: 23.04.2014

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

R.R. Meena S/o Shri Har Sahai Meena, aged about 51 years, R/o C/o Dr. O.P. Mathur, New Kayasth Colony, Lohagal Road, Ajmer, and presently working as Section Officer, Central Board of Secondary Education, Todarmal Marg, Ajmer (Rajasthan).

...Applicant

Mr. C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through Secretary, Government of India, Ministry of Human Resource Development, Shiksha Kendra, 2, Community Center, Preet Vihar, Delhi - 110092.
2. Chairman, Central Board of Secondary Education, Shiksha Kendra, 2, Community Center, Preet Vihar, Delhi - 110092.
3. Secretary, Central Board of Secondary Education, Shiksha Kendra, 2, Community Center, Preet Vihar, Delhi - 110092.
4. Joint Secretary (A&L), Central Board of Secondary Education, Shiksha Kendra, 2, Community Center, Preet Vihar, Delhi - 110092.

...Respondents

Mr. M.S. Raghav, counsel for respondents.

ORDER (Oral)

The present Original Application has been filed by the applicant praying for the following reliefs: -

"(i) That the respondents be directed to upgrade, grading of the applicant as good or above instead of average for the period ending 31/12/2009 by treating the grading as Good/Very Good grading by quashing order dated 20/01/2011 (Annexure-A/1) with all consequential benefits.

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(ii) 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.

(iii) That the costs of this application may be awarded."

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the Reporting Officer without any base made certain observations in the ACR of the applicant for the year 2009 and graded as 'average'. These observations were communicated to the applicant vide memo dated 03.05.2010 (Annexure A/3). The applicant submitted a representation against the observations made in his ACR vide representation dated 05th July, 2010 (Annexure A/4) stating that the observations have been made without any base and without any shortcoming. He also submitted that the 'average' grading as well as observations should be on the basis of material and the same should have been communicated to the applicant prior to recording of ACR.

3. He further submitted that the respondent No. 4 obtained comments from the Reporting Officer as well as Reviewing Officer on 06.09.2010 and 30.09.2010. Both the Reporting Officer as well as Reviewing Officer in their comments have stated that nothing adverse has been recorded and the observations are as per duties performed.

4. Learned counsel for the applicant argued that in view of this fact the down gradation of ACR is not at all justified. The

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applicant has been graded Good / Very Good since 2005 while doing the same nature of work.

5. He also submitted that the Reporting Officer as well as Reviewing Officer in their comments (Annexure A/5 and A/6) nowhere disclosed that on what foundation, observations have been made and such observations also justified down grading of ACR as Average.

6. Learned counsel for the applicant vehemently argued that the respondent no. 2 being the competent authority nowhere considered the representation of the applicant as per points raised in the representation and rejected the same by upholding grading recorded by the Reporting Officer and Reviewing Officer vide Memo dated 20.01.2011 (Annexure A/1). Thus, the rejection of the representation against the ACR for the year 2009 is arbitrary, illegal and unjustified and also against the rules / regulations /instructions on the subject.

7. Learned counsel for the applicant also argued that he was never informed of any shortcomings in his work or conduct. The applicant was also not called for any explanation or any chance of hearing prior to recording of grading. Thus, the recording of average grading in his ACR has been in violation of principles of natural justice. It has been so recorded just to deprive the applicant from his due promotion. Therefore, the learned counsel for the applicant submitted that the Memo dated 20.01.2011 (Annexure A/1) vide which the representation of the

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applicant against the ACR for the year 2009 has been rejected be quashed and set aside and the respondents be directed to upgrade the grading of the applicant as Good or above instead of Average for the period ending 31.12.2009.

8. The respondents have filed their reply. In their reply, the respondents have stated that in 2009, the Reporting Officer has made an observation in the ACR of the applicant on the basis of annual performance of the applicant. Immediately after the communication / entry of adverse remark, a Memo was served to the applicant vide office letter dated 03.05.2010 (Annexure A/3), whereby the applicant was given an opportunity to submit a representation with regard to ACR's observation. The applicant submitted his representation which was meticulously gone through by the respondents and found that the contents were baseless and unsustainable. Further the Reviewing Officer has categorically stated that a verbal complaint was received against the applicant by the public and Principals, as he had been misbehaving as well as applying delay tactics even for signing the transfer certificates and experience certificates. More so, the remarks sought to be challenged, herein, are based on the performance. The Reviewing Authority has affirmed the entry in the ACR of 2009 with reasons.

9. With regard to the submission that the applicant had been graded always as Good or Very Good on earlier occasions, learned counsel for the respondents submitted that the applicant

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was given overall grading as Average in his ACR of 1998 and 2002.

10. The Reporting Officer as well as Reviewing Officer have clearly mentioned in their comments that the remarks were recorded as per the performance of the applicant during that period.

11. Learned counsel for the respondents submitted that the applicant has preferred the present O.A. against the order dated 20.01.2011 based on biasness, but he failed to implead the competent authority by name and failed to point out any basis showing the bias of the competent authority against the applicant. Therefore, the O.A. has no merit and it should be dismissed with costs.

12. Heard learned counsel for the parties and perused the documents available on record.

13. From the perusal of the ACR of the applicant for the year 2009, it is clear that the following observations have been made by the Reporting Officer in the ACR of the applicant -

1	Attitude of work: Please comment how far the officer can be relied upon; his sense of responsibility; the extent to which he is dedicated and motivated; his willingness to learn and systematize his work.	His attitude towards any assignment is satisfactory but he needs to be motivated in performing the work according to gravity and nature of the work.
2	Ability to inspire and motivate: Please comment on the capacity of the officer to motivate, to obtain willing support by own conduct and capacity to inspire confidence.	Time to time he had been advised to improve his conduct more with the staff and public and motivate them to do hard work and make more cordial relations with the public.

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3.	General assessment: Please give an overall assessment of the officer with reference to his strengths and short-comings and also by drawing attention to the qualities, if any, not covered by the entries above.	The officer has the capability and strength to work more if he may properly listen the advice of his superiors and implement the same in his work.
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The applicant was duly communicated these observations by the respondents vide their Memo dated 03.05.2010 (Annexure A/3) and he was given an opportunity to submit his representation, if any, in respect of above observations. The applicant made a representation dated 05th July, 2010 (Annexure A/4). On his representation, the comments of the Reporting Officer and the Reviewing Officer were obtained by the respondents and thereafter the competent authority decided the representation of the applicant vide Memo dated 20.01.2011 (Annexure A/1). In this Memo, the competent authority has stated that the Board after fresh review does not find anything which may merit intervention in this regard. Accordingly, the competent authority has decided that the Adverse remarks communicated to the applicant remained un-expunged. Therefore, I am of the opinion that the principle of natural justice has been followed. The observations of the Reporting Officer have been duly communicated to the applicant for making a representation. The applicant on his part made a representation against these observations which were duly considered by the competent authority. I do not find any irregularity, illegality or arbitrariness in the Memo dated 20.01.2011 (Annexure A/1).

14. Learned counsel for the applicant drew my attention to the Office Memorandum No. 21011/1/2010-Estt.A, dated 13th April,

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2010, issued by the Govt. of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, New Delhi, which deal with the objective consideration of the representation by the competent authority against the remarks in the APAR, and he argued that the instructions contained in this Office Memorandum have not been followed by the competent authority while deciding the representation of the applicant. I have carefully perused the Office Memorandum dated 13th April, 2010 and I am of the opinion that the competent authority has followed these instructions. Before deciding the representation of the applicant, the competent authority obtained the views / comments of the Reporting Officer as well as Reviewing Officer and thereafter decided the representation of the applicant objectively. Thus, due procedure has been followed while deciding the representation of the applicant.

15. The applicant has stated in the O.A. that he has been given average grading just to deprive him from his promotion but there is no such fact on record to prove that either the Reporting Officer or the Reviewing Officer had any bias against the applicant, nor any of the respondents have been impleaded as party-respondent by name in the O.A. Therefore, on this count also, the applicant is not entitled for any relief in the present O.A.

16. The ACR of an employee is recorded on the basis of the performance for the period under report. The Reporting Officer

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and the Reviewing Officer record their remarks on the basis of the performance noticed by them of the concerned official working under him/her. In the present case, the Reporting Officer as well as Reviewing Officer have clearly mentioned in their comments that remarks were recorded as per the performance of the applicant. The Reviewing Officer has also mentioned that he has been getting verbal complaints against the applicant by the public and Principals that he has been misbehaving as well as applying delay tactics even for signing the transfer certificates and experience certificates.

17. Therefore, on the basis of the above, I am of the opinion that the applicant has failed to make out any case for interference by this Tribunal and, as such, the Original Application deserves to be dismissed.

18. Consequently, the Original Application being devoid of merit is dismissed with no order as to costs.


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

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