

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 477/2013

ORDER RESERVED ON : 03.02.2015

DATE OF ORDER : 5.02.2015

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Shri Rabinder Singh Cheema, IDES, Joint Director, Directorate Defence Estates (SWC) H-41, Tagore Path, Bani Park, Jaipur.

... Applicant
(By Advocate: Mr. Tanveer Ahmed)

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi.
2. The Director General of Defence Estates, Ministry of Defence, Raksha Sampada, Ulan Bataar Marg, Delhi Cantt.
3. The Union Public Service Commission through its Secretary, Shahjahan Road, New Delhi.
4. The Secretary, DOPT, North Block, New Delhi.

... Respondents
(By Advocate: Mr. D.C. Sharma)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

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

- "(i) By an appropriate order or direction the impugned communication/letter/order (Annexure A/1 to Annexure A/1-H) may kindly be quashed and set aside and accordingly the respondents may kindly be directed to set aside the remarks and grading recorded by the Shri Balsharan Singh (Accepting Authority) from ACR of 2007-2008, ACR of 2008-2009 and ACR/APAR of 2009-2010 with all consequential bejefits.
- (ii) Any other relief as the Hon'ble Tribunal may deem just and proper under the facts and circumstances may be granted in favour of the applicant."

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

3. The learned counsel for the applicant argued that ACR for the year 2007-2008 was initiated by Mr. Ashwani Kumar as Reporting Officer and he recorded the grading of the applicant as 'Very Good'. The said ACR could not be reviewed for the reason that the Reviewing Officer demitted office on 31.07.2008. The Accepting Officer downgraded the grading of the applicant from 'Very Good' to 'Good' as under:-

"I find that the Reporting Authority (Shri Ashwani Kumar, Director) has not made his report with due care and attention. On the contrary, he has gone overboard in praising the Officer, has ceased to be objective and given an exaggerated account of the alleged positive trait of the Officer. Also no specific achievements of the Officer have been brought out to justify grading of 'Very Good'. As regards integrity, a Charge Sheet alleging lack of integrity is pending against the Officer. I have watched the Officer's performance during the period under Report. I do not agree with the assessment given by the Reporting Authority. I grade the Officer 'Good'."

4. That the Accepting Authority did not comment on the targets/achievements recorded in ACR (2007-2008) which were fully agreed by the Reporting Officer in Part III of the ACR. The learned counsel for the applicant also argued that Shri Balsharn Singh took over the charge of DG DE, Delhi Cantt. on 01.02.2008 (as per Civil list issued during his period) and as such he had only two months in 2007-2008 to watch the performance of the applicant. Since his period as Accepting Authority as DG DE Delhi is less than three months, he should not have given his remarks in ACR for the period 2007-2008.

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Thus the remarks given by the Accepting Authority for the period 2007-2008 are violative of Government instructions.

5. On the contrary, the learned counsel for the respondents submitted that the Accepting Authority has downgraded the grading of the applicant after giving due reasons for the same which fully justified the downgrading. As regards the integrity of the applicant, the Accepting Authority has merely mentioned the fact of pending of charge sheet alleging lack of integrity, which is a matter of record.

6. With regard to the submissions of the learned counsel for the applicant that the Accepting Authority has not supervised the work of the applicant for less than three months and, therefore, he was not entitled for recording his acceptance of the ACR, the learned counsel for the respondents submitted that as per Administrative Reforms OM No. 51/3/74-Estt. A dated 22.05.1975, no such period has been prescribed in case of Accepting Authority for writing the ACRs of an employee. The requirement of supervising the work for minimum three months is for Reporting and Reviewing level officers only.

7. I have carefully perused the OM referred to by the learned counsel for the respondents. In this OM, it has been provided that the Reporting, Reviewing and Endorsing Officer should have been acquainted with the work of the official reported upon for at least three months during the period covered by the confidential report. From the perusal of these instructions, it is clear even the Accepting Authority should

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have been acquainted with the work of the official reported upon for at least three months. Admittedly in this case, the Accepting Authority has not seen the work of the applicant for three months during 2007-2008 as he joined the post of DG DE Delhi Cantt. on 01.02.2008. Hence, on this count alone, the entry recorded by the Accepting Authority for the year 2007-2008 cannot be read against the applicant. Therefore, the entire entry as recorded by the Accepting Authority for the ACR of 2007-2008 needs to be expunged. Accordingly the respondents are directed to expunge the remarks recorded by the Accepting Authority in the ACR of the applicant for the year 2007-2008.

8. The learned counsel for the applicant argued that in the ACR 2008-2009, the Reviewing Authority has not recorded his comments instead the Accepting Authority has recorded his comments in the Column of Reviewing Authority. In the year 2008-2009, the Reporting Officer has graded the applicant as 'Very Good' but the Accepting Authority while recording his remarks in the Reviewing Authority's column has graded him as 'Good' without mentioning any reasons for downgrading. Shri Balsharan Singh, DG DE is not the Reviewing Authority, he is the Accepting Authority. Therefore, he could not have recorded his remarks as Reviewing Authority. Thus the remarks recorded by the DG DE as Reviewing Authority are per se illegal. No reasons has been recorded on the ACR of the applicant for the year 2008-2009 for which it could not be put up before the Reviewing Authority.

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9. On the other hand, the learned counsel for the respondents drew my attention to Para 4.22 of their reply in which hierarchy has been given for recording the ACR of Joint Director level officer, which is quoted below:-

- (i) Director, Defence Estates, the Command-Reporting Officer
- (ii) Principal Director, Defence Estates the Command – Reviewing Officer
- (iii) Director General, Defence Estates Accepting Officer.

But the learned counsel for the respondents could not clarify as to why the report of the applicant for the year 2008-2009 could not be put to the Reviewing Authority before sending it to the Accepting Authority. He could not also clarify as to why DGDE recorded his remarks as Reviewing Authority when actually he is the Accepting Authority. If for any reason, the ACR of the applicant for the year 2008-2009 could not be sent to the Reviewing Authority, then a certificate to that effect should be recorded and as it was done in the case for the ACR 2007-2008 and then the Accepting Authority should have recorded his views in the column of Accepting Authority as he had done for the year 2007-2008. It appears that the Accepting Authority was in a hurry to record his views because before recording his views, he did not check as to why the Reviewing Authority has not recorded his comments and the ACR form of the applicant has been sent directly to the Accepting Authority without routing it through the Reviewing Authority. The Accepting Authority even did not care to see

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that he records his comments as Accepting Authority at the proper place that is Part VI of the ACR form instead he recorded his views at Part V of the ACR form. Part V of the ACR is meant for remarks of the Reviewing Authority and not the Accepting Authority. Admittedly the DG DE is not the Reviewing Authority and, therefore, remarks written by him in the column of Reviewing Authority cannot be read against the applicant. Hence, the respondents are directed to expunge the ACR of the applicant for the year 2008-2009 given by the DG DE as Reviewing Authority.

10. With regard to the ACR for the year 2009-2010, the learned counsel for the applicant submitted that the Accepting Authority has again downgraded the grading given by the Reviewing Authority. He argued that the Reviewing Authority has graded the applicant 'Outstanding' in the APAR for the year 2009-2010, which has been downgraded as 'Good' by DG DE with following remarks on 28.08.2010:-

"The Reviewing Authority has only commented upon the general abilities of the Officer but has not justified upgrading the Report from 'Good' to 'Outstanding'.

In the circumstances I agree with the grading (of 'Good') given by the Reporting Authority as this grading flows from the self-appraisal given by the Officer reported upon and the assessment given by the Reporting Authority".

11. The learned counsel for the applicant argued that though the Reporting Authority for 2009-2010 was Director DE but the applicant's day today interaction was with Principal Director

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DE, who was the Reviewing Authority. That Accepting Authority never visited Pune office during the year under report and never had direct interaction with the applicant. He had no occasion to watch the performance of the applicant when he functioned as Joint Director DE Pune during the year 2009-2010. That Accepting Officer has not given any cogent reason for downgrading the APAR of the applicant for the year 2009-2010.

12. On the other hand, the learned counsel for the respondents submitted that the allegation of mala fide with Balshran Singh, DG DE is baseless. APAR has been downgraded by the Accepting Authority in consonance with government instructions in this regard. The representations submitted by the applicant with regard to the said APAR has been duly considered and decided by the competent authority and, therefore, the OA has no merit and it should be dismissed.

13. I have carefully perused the APAR of the applicant for the year 2009-2010. The Reporting Officer has graded the applicant as 'Good' and has given overall grade of 05 marks on a score of 01-10. However, the Reviewing Authority has given 08 marks on the score of 01-10. The Accepting Authority has stated that the Reviewing Authority has only commented upon general ability of the officer but has not justified the upgrading the report from 'Good' to 'Outstanding'. In the circumstances he agreed with the grading 'Good' given by the Reporting

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Authority as this grading flows from self appraisal given by the officer reported upon and the assessment given by the Reporting Officer. The remarks of the Accepting Officer that the Reviewing Authority has not justified the upgrading the report from 'Good' to 'Outstanding' does not appear to be correct. I have carefully perused the remarks given by the Reviewing Authority in which he has clearly mentioned that he does not agree with the views of the Reporting Officer. Column 2 of Part V of the APAR form deals whether the Reviewing Authority agrees with the assessment made by the Reporting Officer. The Reviewing Authority has categorically mentioned as 'No' in his column. Similarly Column 3 of Part V deals with reasons to be given by the Reviewing Authority in case of difference of opinion with the Reporting Officer. In this column, the Reviewing Authority has given detailed reasons as to why he has not agreed with the views of the Reporting Officer. In column 4 of the proforma of the APAR again, the Reviewing Officer has detailed the pen picture of the applicant's work and on the basis of his assessment, he has given 08 marks to the applicant on scale of 01-10. Therefore, the observation of the Accepting Authority that Reviewing Authority has not justified upgrading the report from 'Good' to 'Outstanding' is not correct. On the contrary, if the Accepting Authority did not agree with the remarks of the Reviewing Authority, he should have recorded reasons for the dis-agreement. Hence, I am of the opinion that remarks recorded by the Accepting Authority without recording any plausible reasons for not agreeing with the assessment of the Reviewing Authority should not be read



against the applicant. Therefore, the remarks recorded by the Accepting Authority dated 28.08.2010 in the APAR for the year 2009-2010 needs to be expunged. Therefore, the respondents are directed to expunge these remarks from the APAR of the applicant.

14. The representation of the applicant against his ACR for the 2008-2009 and 2009-2010 has been rejected without assigning any reason. The letter dated 18.07.2011 (Annexure A/1-A and letter dated 09.08.2011 (Annexure A/1-B cannot be said to be speaking order on the representation given by the applicant. Therefore, they are quashed and set aside.

15. With regard to the decision of the competent authority on the representation against the ACR 2007-2008, as already discussed earlier, the Accepting Authority has not seen the work of the applicant for three months and therefore, he was not entitled to record his view. This point has not been discussed in the letter dated 06.11.2012 (Annexure A/1-C. Therefore, decision communicated vide letter dated 06.11.2012 is also quashed and set aside.

16. With these directions & Observations, the OA is allowed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

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