

1
28

CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A No. 060/00296/2014

Date of decision: 26.5.2016
(Orders reserved on : 20.05.2016)

CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

Jaswinder Singh

S/o Sh. Karam Singh,

aged 57 years,

presently working as Post Master General (B&M),

Rajasthan Circle,

Jaipur-302007.

BY ADVOCATE: Mr. Dhiraj Chawla

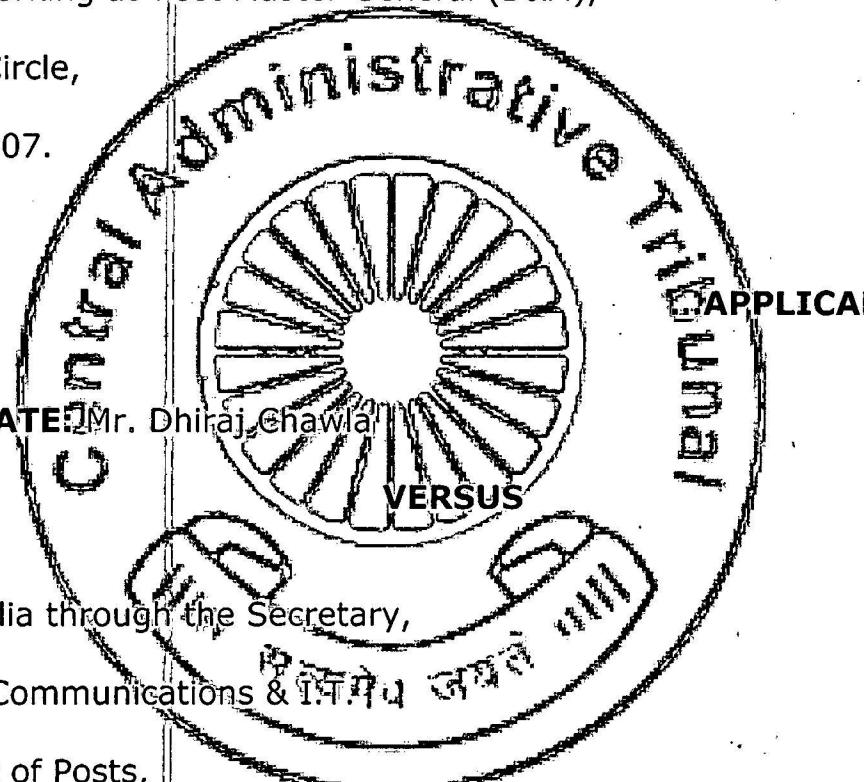
Union of India through the Secretary,

Ministry of Communications & I.T. अ॒ष्ट्र॒प्ति अ॒व॒िक॒ास अ॒व॒िभ॒ाग

Department of Posts,

Dak Bhawan,

New Delhi-110116.



...RESPONDENTS

BY ADVOCATE: Sh. Ram Lal Gupta

ORDER**HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-**

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, seeking the following relief :-

"(i) To set aside the impugned order/O.M. dated 25-10-2013 (Annexure A-1) whereby the Representation of the applicant dated 27-1-2010 (Annexure A-8) against the adverse remarks, recorded in his ACR for the period 1-4-2009 to 30-9-2009 (Annexure A-9) has been rejected by skeletal and cryptic order.

(ii) To further set aside & quash the ACR for the period 01-4-2009 to 30-9-2009 (Annexure A-7) being arbitrary, perverse, motivated & outcome of bias, prejudice and mala-fide on the part of the Reporting Officer who was the then Chief Post Master General, Punjab Circle & prejudice and non application of mind on the part of Reviewing Authority."

2. The facts leading to the filing of this Original Application are that the applicant is a Group 'A' officer of 1980 batch of Indian Postal Service and is posted as Post Master General, Jaipur. He worked in Chandigarh as PMG w.e.f. March, 2007 and was transferred to Mumbai w.e.f. 16.2.2011 and to Jaipur w.e.f. 7.2.2013. At no point of time any adverse remarks were endorsed by any Reporting or Reviewing Officer in any of his ACRs from 1982 till 2008-09. In March, 2007, he was posted in Punjab Region, Chandigarh as PMG and continued till 2011 when he was sent to Jaipur. Mr. P.R. Kumar was Chief PMG when applicant was working from 15.5.2008 to 30.9.2009. Reporting officer retired on 30.9.2009. During this period RO wrote two ACRs one from 15.4.2008 to 31.3.2009 and another from 1.4.2009 to 31.9.2009 and in both these ACRs, the Reviewing Authority was also same i.e. Ms. Radhika Doraiswamy, former Secretary Posts., During his ACR for the period 15.5.2008 to 31.3.2009, Reporting Officer found his

work quite well and awarded his 'Very Good'.. The Review Authority (Ms. Radhika Doraiswamy) agreed with the same. However, it is only for the period from 1.4.2009 to 30.9.2009 that adverse remarks were recorded in his ACRs out of prejudice towards the applicant. He claims that Reporting Officer was to retire on 30.9.2009 and abundant funds related to Project Arrow started flowing from department in April-June, 2009, he tried to centralize all funds in his hands also related expenditure with obvious aim and motive of making monetary gain and when applicant resisted, he became revengeful and gave totally colourless and damaging assessment of excellent performance of the applicant during the period of this report., He even tried to abolish the post held by the applicant. Within a short period, performance of an officer cannot deteriorate. Nothing has happened, yet the Reporting Officer recorded all the adverse remarks in the ACR for the said period in a fit of anger and revengeful attitude. Effort was also made to redesignate the post of PMG to humiliate the applicant. The applicant submitted a representation dated 27.8.2009 against high handedness and arbitrariness of Reporting Officer but to no avail and Reviewing Authority uphold adverse / below bench mark marks. Vide OM dated 27.8.2009 (A-4) the applicant was asked to give his comments on Report sent by the Reporting Officer. He submitted a reply to the same on 9.9.2009 (A-5) along with 24 Annexures. Though for the period 15.5.2008 to 31.3.2009, he has been branded as 'Very Good" but for the period 1.4.2009 to 30.9.2009, he becomes "Good" only where adverse comments have been made against health also consciously as it will make him ineligible or the

next grade. A complaint of sexual harassment was also mentioned in the ACR by Reviewing Officer, though review was not made within one month, as per extant instructions. The entry was made without making proper enquiry. Though she herself agreed with applicant being "Very Good" for the preceding period on 4.1.2010. The adverse remarks were conveyed to applicant vide letter dated 14.1.2010 against which he made representations demolishing the remarks made therein, to the President of India, being appointing authority of a Group 'A' Officer. The Member (Personnel) made adverse comments on remarks made by Reporting Officer but the Reviewing Authority maintained her comments made in note dated 28.6.2010. However, the Secretary Post (Reviewing Authority) was able to convince the Minister to approve remarks of Reviewing Authority. She could not be allowed to have any rule as it would amount to having a judge over own decisions. The Minister for Communications & I.T. mechanically accepted the view of Reporting Officer and Reviewing Officer, without mention as to whether he accepts or otherwise. The applicant submitted a memorial dated 1.1.2010 to the President of India. He then filed O.A.No. 1155 of 2011 to quash order dated 15.7.2010 (A-1) vide which his representation against adverse / below bench mark ACR was rejected and below bench mark ACRs etc. which was disposed of on 1.11.2011 to decide the memorial of the applicant. C.P. No. 140 of 2012 was also filed upon which a communication dated 90.8.2012 was issued indicating that Memorial was not maintainable. The C.P. was, thus, dismissed. Then applicant filed O.A.No. 916-CH-2011 which set aside order dated

15.7.2010 with direction to the competent authority to reconsider the representation, vide orders dated 26.7.2013. However, vide letter / order dated 25.10.2013, the plea of the applicant has been declined. By use of RTI Act, 2005, he obtained photocopies of noting sheet which indicate that a DDG (P) had made complete note adverse to the claim of the applicant to reject his representation. The remarks of Reporting Officer were not called as he had retired but remarks of Reviewing Officer were called which are quoted extensively, though she too had retired in 2011. He claims that such consideration was only in the nature of formality. He claims that the shortfall in the achievement of targets is nature consequences as targets cannot be achieved to the tune of 100%. The achievements made by the applicant were never challenged. The issue of one or two days' casual leave has been blown off out of proportion. Casual leave is treated as a duty. There is no procedure for applying casual leave in advance. In any case he had given intimation through email in advance which has not been denied by any one. The remarks based on Memorandum of Services cannot be sustained as it would amount to violation of principles of natural justice, as it is maintained secretly and Reporting Officer has manipulative powers to destroy career of an officer at whims and fancies. There is no mention in DoPT Compendium relating to ACRS of Group A I.P.S Officers.

3. The respondents have filed a reply in which it is submitted that the application is full of malicious allegations of arbitrariness and harassment made against the assessment of Reporting and Reviewing Officer in the APAR. In pursuance of DOPT

instructions dated 14.5.2009, the below bench remarks were conveyed to the applicant for making a representation which was considered and rejected by competent authority vide order dated 15.7.2010 as per procedure laid down in instructions of DoPT issued on 14.5.2009 taking into account comments of Reviewing Officer and other relevant material available in the case., The Reporting Officer has indicated that the applicant did not carry out monitoring activities and not attended the inauguration of the Jalandhar HO or the other Project Arrow offices as ordered by the Chief PMG. He has not achieved his revenue targets. He has shown incorrect achievement in his self appraisal. He objected that there are no separate targets assigned to him. However, CPMG Punjab Circle has assigned targets for each Division under the applicant / PMG and it was upto him to motivate / take steps for the Divisions to achieve the targets. In memo of services, CPMG had been monitoring these targets. The Reporting officer had recorded many observations about applicant's lack of interest in Project Arrow, which was communicated to him through a number of letter throughout the period. Thus, comments are based on working of the applicant. The Reviewing officer has also taken views on the issue in letter dated 27.8.2009 related to the applicant and highlighted his observation in examining the representation of the officer. The then CPMG Punjab Circle, had made a complaint against the applicant. He was given an opportunity explain his conduct. He submitted his defence via letter dated 9.9.2009. However, the CPMG who made complaint retired on 30.9.2009 and as such matter was dropped midway. The Reporting Officer has made his remarks on the overall



performance of the applicant during the relevant period and not on the basis of issues raised by him in his complaint against the applicant. He has clearly mentioned that knowledge and performance of the applicant is good, by and large, which requires more focus. He did not follow many instructions and lacked punctuality in attendance and his conduct and discipline needs improvement. The applicant suffers from back pain, which has been mentioned as a matter of fact only and not out of any ill motive. As per Rule 174 (7) and 174 (9) of Postal Manual "The memo of services should invariably be consulted at the time of writing the annual report through the report itself should necessarily be based on the employee's performance during the year as a whole". Thus, Reporting Officer had written his remarks taking into account the instructions on the subject. Abolition of a post is a policy matter. The representation of the applicant has been rejected as per the rules and instructions. If a representation is rejected by Minister-in-Charge, no memorial would lie to the President as per instructions of DoPT dated 6.3.1989. Thus, memorial was not maintainable. The respondents have also filed two affidavits along with documents supporting the remarks by Reporting Officer in regard to irregular claim of LTC by the applicant; instructions regarding visit to Project Arrow Post Offices; Sexual harassment case of a lady and instructions regarding attending the video conferences.

4. We have heard learned counsel for the parties at length and perused the material on file.
5. Learned counsel for the applicant placed reliance on decision of Apex Court in **U.P. Jal Nigam & Others Vs. Prabhat**

Chandra Jain & Others, 1996(2) SCT 227, to claim that if there was any shortfall in work and conduct of the applicant, he should have been advised to improve his conduct before spoiling his ACRs. The applicant has been prejudiced by inclusion of sexual harassment complaint against him being incorporated in ACR which took place two months after completion of period of ACRs. The respondents are guilty of causing undue delay in deciding the representations of the applicant. The Minister in Charge has also not applied his mind and blindly accepted what was put up to him by subordinate officers causing prejudice to the claim of the applicant. He also placed reliance on decision of Hon'ble Punjab and Haryana High Court in Dr. Jagdish Chander Vs. Union of India etc. 2006(5) SLR 291 in which the claim of petitioner was allowed as petitioner and respondent no. 5 (Reporting Officer) were rivals professionally with proven bias and animosity. It was held that recording of ACR by an officer who has proven bias and animosity against petitioner, was unsustainable.

6. A perusal of the pleadings would indicate that the averments made by the respondents in their written statement / affidavits have gone unrebutted inasmuch as the applicant was given opportunity to file replication but he chose not to do so and in fact a statement was made on 30.9.2014 before the Registrar that applicant does not want to file any replication and pleadings were deemed to be complete. Thus, in terms of the law of pleadings this Court is well within its power and authority to accept what the respondents have said in their reply. Be that as it may, in this case the representation of the applicant against below bench remarks has been considered by

the authorities but to remark of 'Good' has been maintained and it cannot be said that there has been any malafide in their action more so when the applicant has not impleaded anyone by name. In the absence thereof, one cannot go into the allegations of malafide made by the applicant. The Reporting Officer has made comments on the basis material on record including the evidence available in the relevant service folder maintained secretly by the Reporting Officer.

7. In an identical case where the representation of the employee against adverse remarks was rejected and the Tribunal had allowed the O.A. holding that impugned order was non-speaking and adverse remarks should be deemed to have been expunged, the Apex Court in **UNION OF INDIA & ORS V. E.G. NAMBUDIRI** [1991] RD-SC 109 (23 April 1991), has held

as under:-

"There is no dispute that there is no rule or administrative order for recording reasons in rejecting a representation. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a Government servant against the adverse entries, the competent authority is not under any obligation to record reason. But the competent authority has no licence to act arbitrarily; he must act in a fair and just manner. He is required to consider the questions raised by the Government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer counter-signing the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of absence of reasons.

No order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons *ex facie* and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In governmental functioning before

any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the Government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the Court which may have led to the rejection of the representation.

It is always open to an administrative authority to produce evidence alinude before the court to justify its action.

The President was under no legal obligation to record reasons in rejecting the respondent's representation against the adverse remarks. Consequently, the order of the president was not vitiated in law. The Central Administrative Tribunal committed error in quashing the order of the president as well as the order of the Ministry of Commerce dated 6.1.1986. Assuming that there was some defect in the order rejecting the respondent's representation, the Tribunal was not justified in holding that the adverse entries awarded to the respondent should be treated as having been expunged."

8. It is settled proposition of law that if factual elements forming the basis of adverse remark are available, it would be just and proper for a Court of Law not to enter the arena of appreciation of effects and it would be right in declining to enter into the controversy as held by Hon'ble Supreme Court in **Bharat Ram Meena V. Rajasthan High Court at Jodhpur and others**, AIR 1997 Supreme Court 896].

9. The Apex Court in **Major General IPS Dewan V. Union of India** [1995 SCC L&S 691 has held that 'Adverse remarks can be made by the appropriate superior officer on the basis of mere assessment of the performance of the officer and no enquiry or prior opportunity to represent need be provided before making such remarks, unless, of course, the Rules so provide'].

10. In the case of **Ramesh Prasad Mahapatra V. State of Orissa and others** [1980 (2) SLR 417 425], it has been held that 'the compliance with natural justice is ensured by the right

of representation, due consideration thereof and upon the representation being successful, review of the same is possible'.

11. It is apparent that in this case the applicant has been given an opportunity of hearing and principles of natural justice have been followed and after considering his defence the impugned orders have been passed rejecting his request to improve the gradings. The applicant has made various allegations but surprisingly no one has been impleaded by name as a party so as to alleged or prove any malafide intentions on the part of the named authorities.

12. It is settled legal proposition that in case allegations of mala fide are made against any person he is to be impleaded by name, otherwise the allegations cannot be considered as held in their cases of Dr. J.N. Banavalikar v. Municipal Corporation of Delhi and Anr., AIR 1996 SC 326; State of Bihar and Anr. v. P.P. Sharma, I.A.S. and Anr., 1992 Suppl (1) SCC 222; I.K. Mishra v. Union of India and Ors., (1997) 6 SCC 228; and All-India State Bank Officers Federation and Ors. v. Union of India and Ors., JT 1996 (8) SC 550.

13. In the case of Federation of Officers Association v. Union of India and Ors., 2003 AIR SCW 1764, the Apex Court has held that the allegation of mala fide has to be specifically made and the person against whom such allegations are made has to be impleaded and in his absence such allegations cannot be taken into consideration.

14. The allegations made by the applicant in this case against Reporting Officer and Reviewing Authority are of sweeping in nature and do not require any investigation on the issue for the

reason that same are not specific and fall short of making any inquiry in this regard. The issue of "malus animus" was considered in the case of **Tara Chand Khatri v. Municipal Corporation of Delhi and Ors.**, AIR 1977 SC 567, wherein the Hon'ble Supreme Court has held that the High Court would be justified in refusing to carry on investigation into the allegation of mala fides, if necessary particulars of the charge making out a prime facie case are not given in the writ petition and burden of establishing mala fide lies very heavily on the person who alleges it and there must be sufficient material to establish malus animus.

15. This Court cannot sit in appeal over the decision taken by the authorities more so when same has not been shown or proved to be suffering from any perversity. In that view of the matter, this O.A. turns out to be devoid of any merit and is dismissed.
16. The parties are left to bear their own costs.


(SANJEEV KAUSHIK)
MEMBER (J)

PLACE : CHANDIGARH.

DATED: 26.5.2016

HC*