

**Central Administrative Tribunal
Principal Bench, New Delhi**

C.P. No. 157/2016

In

OA No. 2090/2014

Order Reserved on: 30.09.2016
Order Pronounced on: 25.10.2016

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

Shri Yogendra Babu Sharma,
R/o 54/2, Kripa Kunj, Ater Road,
Bhind (MP)-477 001

- Petitioner

(Petitioner in person)

VERSUS

1. Shri Shashi Shekhar,
Secretary,
Union of India through
Ministry of Water Resources,
Government of India,
Sharam Shakti Bhawan,
Rafi Marg, New Delhi-110 001

2. Dr. A.K. Sihag,
The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi-110 069

3. Shri K.B. Biswas,
Chairman,
Central Ground Water Board,
Bhoojal Bhawan, N.H.-IV,
Faridabad-121 001

- Respondents

(By Advocates: Mr. Rajeev Kumar and Mr. Ravinder Aggarwal)

O R D E R

Dr. B.K. Sinha, Member (A):

The instant Contempt Petition has been filed by the petitioner for non-implementation of the order of the Tribunal dated 12.03.2015 in OA No. 2090/2014. The operative portion of the order reads as follows:-

“18. ...We, therefore, dispose of this Application with the direction to the respondents to hold a review DPC treating the ACR for the year 2007-08 as no ACR, and in place thereof to consider the ACR for the year 2003-04. It is further provided that the DPC should also consider the ACR for the year 2005-06 as it is there on record, and give specific finding as to how it has been treated. The above direction is to be carried out by the respondents within three months from the date of production of certified copy of this order.”

2. The respondent-UPSC filed a Review Application No. 73/2016, seeking a review of the order dated 12.03.2015 passed in OA No. 2090/2014 on the ground that the said order of the Tribunal restricted the autonomy and independence of the DPC, which is fully armed with discretion to devise its own methodology. This RA was considered and dismissed vide order dated 31.05.2016. The petitioner has subsequently filed this CP on the ground that the order dated 12.03.2015 in OA No.2090/2014 was to be complied within a period of three months, but instead the respondents have taken more than one year and still

have not passed any order. Therefore, the respondents have committed contumacious contempt of Tribunal's order dated 12.03.2015. The petitioner has prayed for initiation of contempt proceeding under Section 17 of the Administrative Tribunals Act, 1985 read with Section 12 of the Contempt of Courts Act, 1971.

3. The respondent no.2, i.e., Secretary, UPSC, submitted a compliance affidavit in this case, reporting that the orders of this Tribunal have been complied with in its letter and spirit. The review DPC was held on 02.08.2016 as per order of the Tribunal dated 31.05.2016 passed in RA No. 73/2016. The review DPC examined CR/APARS for the year 2002-03 in lieu of 2007-08 and decided to opt the assessment of the original DPC in respect of the years 2003-04 and 2004-05 of the officer and to re-examine the ACRs of the years 2005-06 and 2006-07. The original DPC dated 15.05.2014 had noted certain discrepancies for the year 2005-06 which had been furnished with the proposal of the review DPC. At a time of the original DPC, the Ministry had furnished certificates regarding the compliance of the DoP&T OM dated 13.04.2010 as below:-

“...it is also certified that there is no Below Bench Mark Grading in the ACRs/APARs of the Officers who are under consideration for promotion to the post of Superintending Engineer, except Shri Y.B. Sharma, Executive Engineer whose ACR for the year 2005-06 and 2007-08 are below Bench Mark which have been

communicated to him but no representation has been received from him. Therefore, the ACRs/APARs of the officers for the relevant period, are treated as final.”

4. The issue of upgradation had been raised with the Ministry before convening the review DPC. The Ministry had furnished the following clarification:-

“...that clarifications in the matter were called for from the Central Ground Water Board. The CGWB have clarified that the Hon’ble CAT Principal Bench, New Delhi in its judgment dated 12.03.2015 had not specifically ordered to receive and consider any representation from Shri Yogendra Babu Sharma for upgradation of his ACR for the year 2005-06. However, since the Hon’ble Tribunal had ordered to convene Review DPC, the Board felt that representation from Shri Yogendra Babu Sharma regarding below bench mark ACR for the year 2005-06 could be entertained in terms of DoP&T’s OM No.21011/1/2010-Estt.(A) dated 13.4.2010. Accordingly, representation dated 22.11.2014 of Shri Yogendra Babu Sharma was considered and his ACR for the year 2005-06 was upgraded from ‘Good’ to ‘Very Good’ by Chairman, CGWB being the competent authority. The CGWB have also stated that, if deemed fit, earlier ACR of Shri Yogendra Babu Sharma for the year 2005-06, with grading “Good” which was considered during regular DPC held on 15.05.2014 may please again be considered for the Review DPC to be held.”

The DPC further took note of the fact that as certified by the Ministry at the time of regular DPC held on 15.05.2014, the applicant (petitioner in the present C.P.) was given opportunity to represent against the below benchmark ACRs but he did not make any representation at that time. The extant instructions clearly provide that the

representation can be given by the concerned officer within 15 days of receipt of the ACR. The applicant, however, did not represent within the time limit prescribed. In this case, the applicant represented much later that too after (i) the ACR had attained finality and (ii) the regular DPC had already been held on 15.05.2014. The DPC further took note that the ACR was upgraded without speaking order and that the following entries in respect of certain vital parameters have been retained:-

“PART-III (NATURE AND QUALITY OF WORK)

S.No.2 Quality of output : The quality of performance was satisfactory

PART-III (ATTRIBUTES)

S.NO.10 Supervisory Ability

10(4) Review of Performance : Satisfactory

PART-IV-GENERAL

S.NO.3 General Assessment : He is having strong liking and disliking and able to manage the office work.

S.No.4 Grading : Good.”

5. The Committee found that apart from the specific entries mentioned above, entries that have been retained in the relevant columns also mostly did not reflect performance/ability that could be treated as more than ‘Good’. Hence, with regard to the ACR for 2006-07, the

review DPC again found that there has been interpolation in the record in the following terms:-

“5.2 Again in Column 4, which relates to general remarks given by the Reporting Authority and mentioned work of the Officer and the Grading, the Review Officer has noted “I agree with the Comment” implying that he agrees with the general remarks as well as ‘Average’ grading recorded by the Reporting Officer. Thereafter, what appears to be interpolation and overwriting it has been written “He cannot be graded below V. Good and is graded V. Good’. Apart from the last word ‘Good’, the rest of this sentence appears to be subsequent additions and, therefore, suspicious. In any case, while the Reporting Officer has given detailed remarks on each attribute/parameter, the Reviewing Officer has not given any reasons/justifications to contradict. The ACR does not bear any remarks of an Accepting Authority.”

Consequent of the DPC was that in view of the remarks given and discounted for the interpolation, the applicant could not have been awarded more than ‘Good’. Hence, the Committee found the applicant ‘Unfit’ as he could not achieve the requisite benchmark grading in the ACRs.

6. On the basis of the above, we are satisfied that the respondents have substantially complied with the orders of this Tribunal and the CP is, thus, closed. Notices are discharged. No costs.

(Dr. B.K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

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