

**Central Administrative Tribunal
Principal Bench**

**OA No.1240/2015
MA No.1116/2015**

Reserved on : 20.04.2017
Pronounced on : 18.09.2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mrs. P. Gopinath, Member (A)**

Veena Rajput
Joint Deputy Director/Tech.
aged 56 years,
w/o Sh. R. S. Rajput,
R/o 637, Sector-4,
R. K. Puram,
New Delhi. ... Applicant.

(By Advocate, Shri M. K. Bhardwaj)

Vs.

Union of India & Ors. through

1. The Secretary
Ministry of Home Affairs,
North Block,
New Delhi.
2. The Director
Intelligence Bureau
Ministry of Home Affairs,
North Block,
New Delhi.
3. The Joint Director
Intelligence Bureau
Ministry of Home Affairs,
North Block,
New Delhi.Respondents.

(By Advocate : Shri U. Srivastava)

: O R D E R:

Justice Permod Kohli :

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 challenging the grading/remarks awarded to her in the ACRs for the period 2007-08 and 2008-09, and also seeking quashment of order dated 12.02.2013 (Annexure A-1) rejecting the representation of the applicant against the grading/remarks.

2. Briefly speaking, the facts as emerged from the record are that the applicant was serving as Assistant Director/Tech Timely. Vide Memo dated 04.08.2008, she was served with the remarks recorded in her ACRs for the period 2007-08. The relevant remarks are as under:-

- “(i) She is in a habit of attending office late in spite of instructions given to be punctual and to improve upon in this regard.
- (ii) The officer is a habitual latecomer in spite of written communications.
- (iii) Other than this, you have been found possessing good knowledge in technical field relating to jobs assigned to you and resourceful in dealing with unforeseen circumstances. You have also been found capable of coping with constraints, promptness and disposal of work have been found to be satisfactory.”

3. The applicant has submitted her reply dated 03.09.2008 denying the allegation of late coming, and also tendered her explanation that whenever she got late, prior information was always given to the immediate controlling officer and reason for such late coming was

also communicated. She, however, stated that she has to sit in the office in odd hours/late night just to complete the assigned works. Sometimes, she worked up to 1.00am. Another Memo dated 14.11.2009 was served upon the applicant communicating her remarks recorded in her ACR for the period 2008-09. Following remarks were communicated to her:-

“Your knowledge of sphere of work, analytical ability and ability to inspire and motivate are good. But it has also been reflected in your ACR that your achievements in quality of output, supervisory ability and inter-personal relation and team work are satisfactory. It has also been recorded in your ACR that you are frequently absent on leave citing personal reasons, prolonged absence and divided attention adversely affected your performance at the present posting place. It has also been suggested that you need to reorient yourself in view of changed job requirements.”

4. The applicant submitted her reply dated 14.12.2009 denying the allegation of remaining on leave. She also explained that she had to take leave due to 10+2 examination of her daughter. She had to go to different colleges for entering admission for her daughter with a further explanation that she took leave as available in her leave account. She was further communicated two ACRs for the period 2008-09 and 2009-10 containing below benchmark grading vide Memorandum dated 01.10.2012. Along with that, she was also given ACR(s) prior to the year 2008-09 having below benchmark grading. She filed her representation dated 11.10.2012 against the aforesaid below benchmark grading. While denying the allegations for downgrading her ACRs for the aforesaid two years, she repeatedly

explained, as in her earlier representations, and further stated that there seems to be deliberate attempt to spoil her ACRs. The relevant explanation is reproduced hereunder:-

"3. In view of above, I hereby want to draw your attention to the following:

- a. With regard to the adverse remarks regarding my being a latecomer as recorded in my ACR for the year 2007-08, it is informed that there seems to be a deliberate attempt to spoil my ACR. As evident from my ACR, my capabilities, attitude to work, my potential and my technical knowledge have been highly appreciated by the Reporting Officer, however, in spite of that Reporting Officer has graded my ACR "Good", which is a bit surprising and shows clear bias towards me. Even more surprising is the remarks made by Counter-signing authority who has graded my ACR "Average". It is really surprising that in spite of appreciating my work profile and team work my ACR has been graded as 'Average'. Even in the memo that I have received, my technical competence has been highly appreciated.

As far as my coming late is concerned, I want to bring you kind notice that I have done so with prior permission from my concerned DD and the same was also explained verbally to the then JD/Tech. It is informed during 2007-08, I was posted in DTP section, where I had to sit in office at odd hours including late nights to complete the assigned jobs regarding VVIP visits and for which I even received Communication Certificate from the then JD/VS (Mrs. R. Mattu). Instead of rewarding me for my sincerity and supervisory ability, my seniors have spoiled my ACR. There seems to be a personal vendetta working against me for no fault of mine. I would like to add that for the APR session 2010-11, my reporting officer gave me overall grading of 7.4, which was brought down to 5 by the reviewing officer the then JD/Tech., however, the same was overruled by DIB giving a final grading of 7.4 (copy enclosed).

b. In respect of ACR for the session 2008-09, where the reporting officer has graded my ACR "Good", there is no adverse remarks as such. Even in the memo received regarding the same, my abilities have been appreciated. The ACR has been graded below benchmark solely for the reason that I availed leaves frequently for citing personal reasons. It may be brought to your kind notice that during the said period, my daughter had just completed her class-XII and was preparing for various engineering entrance tests in Delhi. During this crucial period, I had to be on her side to guide and support her & as a result of which, she got admitted to Gurgaon College of Engineering. During this whole period, my daughter required psychological and emotional support from me as there was nobody else with whom she could share her problems and difficulties. It may be mentioned that as Child Care Leave facility could not be availed by me, therefore, I was forced to be on leave as was available to me."

5. The aforesaid representation of the applicant has been rejected vide impugned order dated 12.02.2013. The challenge in this OA to the gradings and the impugned order is same as explained in her representation reproduced hereinabove. It is further stated that the below benchmark grading has been given to her malafide and with ulterior motive to deprive her promotion to the post of Joint Deputy Director/Tech. It is stated that after filing the OA, the applicant got promotion as Joint Deputy Director/Tech. vide order dated 05.07.2014, but not from due date. It is stated that the applicant would have got promotion in the year 2012 itself on similar lines when her juniors were promoted. However, due to malafide on the part of respondents, the applicant has been deprived of promotion from due date. She has also placed on record copy of the ACR for the

year 2013-14 to indicate that her earlier two ACRs for the period 2007-08 and 2008-09 were spoiled without any justification. Her performance for the year 2013-14 was "Outstanding" with overall grade 8.3.

6. The applicant has also relied upon Government of India, DP & AR OM dated 30.01.1978 which *inter alia* requires that the ACR has to be returned and communicated during the time schedule so that no prejudice would be caused to the officer in any manner. It is stated that the ACRs for the period 2007-08 and 2008-09 were communicated in October, 2012 after a long delay of two to three years just to deprive the applicant from her due right of promotion.

7. The applicant has also relied upon OM dated 05.06.1981 which requires that oral or written warning should be given before recording adverse entries. She has also relied upon the judgment of Apex Court in the matters of *J. R. Jain vs. Union of India* [1973 (2) SLR 309]; *S. T. Ramesh Vs. State of Karnataka* [AIR 2007 SC 1262]; *Delhi Jal Board vs. Mohinder Singh* [JT 2000 (10) SC 158] and *State of UP Vs. Yamuna Shakar Mishra & Anr.* [(1997) 4 SCC 7].

8. A detailed counter affidavit has been filed. It is stated that the Reporting and Reviewing Officers of the applicant for the period 2007-08 graded her "Good". However, the countersigning authority while downgraded it to "Average" mentioned that the officer is a

habitual late comer inspite of written communications. Further, for the period 2008-09, the Reporting and Reviewing Officers, and the Countersigning Authority graded her "Good" and mentioned that she was frequently on leave citing personal reasons. It is stated that the prolonged leave and divided attention adversely affected applicant's performance. It is further mentioned that memos dated 19.12.2007 and 23.03.2008 for attending office late were given to the applicant. The respondents have raised the issue of limitation stating that the petition is barred by time. Respondents while denying the allegation of malafide stated that the Reporting and Reviewing Officers have also brought forward good qualities of the applicant in the ACRs, wherein it was mentioned that she possess good knowledge of rules, capable of analysing pros and cons, maintains quality of performance, takes initiative, has good analytical ability etc. However, a unanimous opinion of the Reporting and Reviewing Officers was that she was in the habit of attending office late inspite of pieces of advice given to her. It is further stated that the competent authority after duly considering the representation of the applicant rejected the same. The decision was communicated to the applicant vide Memo dated 23.10.2008. Thus, in compliance to the Department of Personnel & Training OM No.51/5/72-Estt.(A) dated 20.05.1972, adverse remarks recorded in the ACRs for the period 2008-09 were communicated to the applicant vide IB Hqrs Memo

dated 14.11.2009 for making a representation. The applicant submitted a representation dated 14.12.2009 for expunction of the adverse remarks. The respondents have also given the copies of the ACRs for the period 2007-08 and 2008-09 to the applicant in compliance to the DoP&T OM dated 14.05.2009 and 13.04.2010, asking the applicant to submit his representation vide IB Hqrs Memo dated 01.10.2012. The applicant submitted his representation dated 11.10.2012 which has been rejected vide impugned order dated 12.02.2013. It is also mentioned that the applicant was promoted to the post of AD/Tech. w.e.f. 04.08.2008. She was holding a higher post and her performance cannot be compared with her performance in a lower post. It is also mentioned that none of the ADs/Tech including the applicant have the minimum experience in the post of AD/Tech on 01.01.2012 as is required for promotion to the rank of Joint Deputy Director/Tech (JDD/Tech) during the DPC for the period 2012-13. Denying the allegations, it is stated that none of the juniors of the applicant were promoted as JDD/Tech.

9. According to the respondents, the applicant was further considered for promotion in the DPC held for the year 2013-14 considering her ACRs for the period 2007-08 to 2011-12. However, she was found unfit for promotion by the DPC. She was again considered for promotion in the DPC held for the year 2014-15 considering her ACRs for the period 2008-09 to 2012-13. She was

found fit for promotion, and consequently promoted on 05.07.2014 vide IB Hqrs Order No.16/C-III/2014 (2)-15305-34.

10. The applicant has filed rejoinder primarily reiterating the averments made in the main OA. The applicant also sought quashment of the impugned order being non-speaking.

11. We have heard learned counsel for the parties and perused the impugned ACRs.

12. In Column 16 of the ACR for the period 2007-08, the Reporting Officer has given the remarks "Good" to the applicant. Even in General Assessment at Column 15, the remarks are as under:-

"A good technical officer having almost all acceptable qualities of a technically competent team supervisor in performing time bound operations. However, she was in a habit of attending office late inspite of advices, to be punctual, given to her to improve upon.

While awarding with the grading as "Good", the Reporting Officer agreed with the remarks in the following words:-

"I fully agree with the remarks of RO. But for few shortcomings, as reported, the officer has been performing very well and has shown very good results."

"Good".

The Countersigning authority while considering ACRs for the said period has made the following remarks:-

"The Officer is a habitual late comer, in spite of written communication.
Overall Grading - Average".

From the remarks of the countersigning authority, we find that the only reason for downgrading the ACRs of the applicant from "Good" to "Average" is the allegation of 'officer being late comer'. It is relevant to note that this grading is to be awarded considering overall performance of the officer. For the year 2007-08, in all the columns, assessment of the Reporting Officer is appreciative. The Reviewing Officer has agreed with the remarks given by the Reporting Officer, and added that the officer is in the habit of attending office late inspite of advisories. Thus, the only deficiency in the officer as assessed by the Reviewing Officer was habit of late coming in office. Otherwise, the officer possesses good knowledge, hard working, analytic and reliable. Her integrity is "Good". Cordial with the colleagues and sympathetic to deal, and has very good aptitude and potential for growth and development etc. She was assessed as "Good". Merely on account of one factor that she is late coming, downgrading the officer from "Good" to "Average" is not justifiable. Except late coming, no other factor has been taken into consideration by the countersigning authority to down grade the applicant from "Good" to "Average". It is pertinent to note that this is the overall grading, meaning thereby, all the components of officer's profile should be evaluated. From the assessment note and various columns, one's prudence does not justify giving "Average" grading to the officer, merely on account of one factor ignoring the overall

excellent profile of the officer. This definitely pricks the conscience of the Tribunal as well. Though, the Tribunal is not required to sit as a court of appeal but the Tribunal has the jurisdiction in exercise of powers of judicial review to interfere where the action is found to be arbitrary. This is one such example where the action of the countersigning authority seems to be either arbitrary or ignorant of the method of assessment.

13. Hon'ble the Supreme Court in *S. T. Ramesh vs State of Karnataka and another* [(2007) 9 SCC 436] held as under:-

"40. The confidential report is an important document as it provides the basic and vital inputs for assessing the performance of an officer and further achievements in his career. This Court has held that the performance appraisal through C.Rs. should be used as a tool for human resource development and are not to be used as a fault-finding process but a developmental one. Except for the impugned adverse remarks for a short period of about 150 days, the performance of the appellant has been consistently of high quality with various achievements and prestigious postings and meritorious awards from the President of India. We have already seen that the appellant has been graded as "very good", "excellent" and "outstanding" throughout his career. It is difficult to appreciate as to how it could become adverse during the period of 150 days for which the adverse remarks were made. Furthermore, despite such adverse remarks, the Government of Karnataka, considering his merit and ability and outstanding qualities, has already promoted the appellant as the Inspector General of Police.

41. Although, the remarks made by the reporting officer have been questioned by the appellant as if they had been made by Respondent No.2, the Court still has to make an assessment as to whether the said remarks were merited by the appellant on account of his consistently good performance. Even his outburst against the respondent No.2 in his representation

appears to be a fall out of such presumption which was certainly not expected of an officer of the rank and calibre of the appellant. But, in our view, the same should not come in the way of an otherwise unblemished and outstanding career."

14. Insofar as the grading for the year 2008-09 is concerned, the officer has been graded as "Good". In all 12 columns of the assessment, the applicant's work has been assessed as satisfactory, but not so favourably in respect to column No.15 regarding her General Assessment. Her integrity is, however, said to be beyond doubt. Despite such remarks, she has been given "Good" grading by the Reporting Officer and the Reviewing Officer, and the countersigning authority has accepted the same. We do not feel that this ACR needs any kind of interference. The assessment by all the three officers is as per the performance of the officer.

15. It is pertinent to note that except making vague allegations that applicant's two ACRs have been spoiled to deprive her of promotion, no specific averments have been made in respect to columns where her work has been assessed satisfactory. The allegations of malafide and alleged bias are too vague to be taken cognizance of. In any case, these allegations have not been made against the Reporting and Reviewing Officers, nor they have been impleaded as party respondents by name.

16. What is required to be examined by this Tribunal in exercise of powers of judicial review is as to whether action of the respondents

suffers from vice of arbitrariness or there has been violation of principles of natural justice. The order of rejection of representation is a reasoned order. No fault can be found with the same. Since we have set aside the “Average” grading granted by the countersigning authority in the ACR of the applicant for the year 2007-08, the rejection order to that extent has to be set aside.

17. In view of the factual and legal analysis of the facts and records, we partly allow this OA in the following manner:-

- (i) The “Average” grading awarded by the countersigning authority in the ACR of the applicant for the period 2007-08 is hereby set aside. Consequently, the applicant will have “Good” grading for the aforesaid period as awarded by the Reporting and Reviewing Officers.
- (ii) No interference is required in the ACR for the period 2008-09. The impugned order dated 12.02.2013 rejecting the representation of the applicant stands modified to the extent mentioned in para (i) above.

(Mrs. P. Gopinath)
Member (A)

(Justice Permod Kohli)
Chairman

/pj/