

***CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH***

OA No.1312/2016

Order Reserved on: 03.05.2017

Pronounced on: 11.05.2017.

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

K.K. Bansal, age 57
S/o late Sh. D. Prasad,
Deputy Director,
National Water Development Agency,
B-248, Mohan Garden Ext.,
Uttam Nagar,
New Delhi.

(Applicant in person)

- Applicant

-Versus-

1. Union of India through its Secretary,
Govt. of India, Ministry of Water Resources,
River Development & Ganga Rejuvenation
Shram Shakti Bhawan,
New Delhi-110001.
2. The Director General,
National Water Development Agency,
18-20 Community Centre, Saket,
New Delhi-110017.

- Respondents

(By Advocate: Shri R.N. Singh)

O R D E R

Mr. K.N. Shrivastava, Member (A):

The applicant, through the medium of this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985, has prayed for the following reliefs:

“i) To exclude from considerations the annual confidential report from 01/04/2003 to 31/03/2004 where the applicant does not meet the bench mark for promotions to SE/financial up gradation through MACP as the above ACRs were written without any authority and also not communicated to him for representations.

ii) To quash the grading “Good” recorded by the respondent in the ACR for the period 01/04/2005 to 31/03/2006 & 01/04/2006 to 31/03/2007 which does not meet the bench mark for the promotion to SE/financial up gradation through MACP. As the above ACR was intentionally downgraded from Very Good to Good by insertion of an arrow mark, over-writing and cutting.

iii) To quash and set aside the Office Memo no.6/7/2011-Admn/18725 Dated 04.12.2014 & MOWR letter no.16/14/2014-Estt.iv/749 dated 24.03.2015 (Annexure A-1&A2). By these order the representation of the applicant have been rejected and communicated on the subject.

iv) to direct the respondent to grant 3rd financial up-gradation from 1/9/2008 with all arrears of pay.”

2. The brief facts of this case are as under:

2.1 The applicant is a Civil Engineer. He joined the respondent-organization – National Water Development Agency (NWDA) as an Assistant Engineer on 16.12.1985. NWDA comes under the administrative control of Ministry of Water Resources, River Development & Ganga Rejuvenation – respondent No.1. He earned his regular promotions and became Deputy Director in NWDA on 22.12.1994 in the grade of Executive Engineer. He has been awarded ‘Good’ grading for his ACRs for the years 2003-04, 2005-06 and 2006-07. The benchmark for progression in the career is ‘Very Good’. As such, all these three ACRs are below

benchmark. The respondent no.2 did not communicate the below benchmark ACR of the applicant for the year 2003-04 to him. However, vide Annexure A-9 OM dated 24.03.2011, his below benchmark ACRs for the years 2005-06 and 2006-07 were communicated by the respondents to the applicant. The applicant submitted a detailed representation vide Annexure A-12 letter dated 11.04.2011 to the Directorate General, NWDA (respondent no.2). Respondent no.2 vide Annexure A-13 OM dated 09.11.2011 rejected the request of the applicant for upgradation of his ACRs for the year 2005-06 and 2006-07. The applicant thereafter filed an appeal against the OM dated 09.11.2011 before respondent no.1, who vide Annexure A-14 letter dated 11.07.2013, addressed to respondent no.2, informed that in terms of DoPT OM dated 30.01.1978 only one representation against adverse remarks is allowed, which has already been availed by the applicant and as such his appeal was rejected. Aggrieved by the Annexure A-13 OM and Annexure A-14 letter, the applicant filed OA No.507 of 2012 before the Lucknow Bench of this Tribunal. In the said OA he has claimed the following reliefs:

“i) To exclude from considerations the annual confidential report from 01/04/2003 to 31/03/2004 where the applicant does not meet the bench mark for promotions to SE/financial up gradation through MACP as the above ACRs were written without any authority and also not communicated to him for representations.

- ii) To quash the grading "Good" recorded by the respondent in the ACR for the period 01/04/2005 to 31/03/2006 & 01/04/2006 to 31/03/2007 which does not meet the bench mark for the promotion to SE/financial up gradation through MACP. As the above ACR was intentionally downgraded from Very Good to Good by insertion of an arrow mark, over-writing and cutting.
- iii) To quash and set aside the Office Memo no.6/7/2011-Admn/18725 Dated 9.11.2011 (Annexure 10). By these order the representation of the applicant have been rejected and communicated on the subject.
- iv) to quash and set-aside MOWR Office order no. 16/17/2009 Esstt-IV/1048 dated 11th July, 2013 (Annexure 23). By these order an appeal of the applicant have been rejected and communicated on the subject.
- (v) to direct the respondent to grant 3rd financial up-gradtion from 1.9.2008 with all arrears of pay.
- (vi) to allow the O.A. with exemplary cost.
- (vii) to pass such other and further order which their lordships of this Tribunal deemed fit and proper in the existing facts and circumstances of the case."

2.2 The Lucknow Bench disposed of OA No.507/2012 vide order dated 08.08.2014; the operative part of which reads as under:

"9. In view of the above, O.A. is partly allowed. The appellate orders dated 9.11.2011 and 11.7.2013 are quashed. The matter is remitted back to the respondent no.2 to consider and decide the representation dated 11.4.2011 through a reasoned and speaking order keeping in mind the ratio laid down by Hon'ble Supreme Court in the case of Ram Chandra (supra). The above exercise shall be completed within a period of four months from the date of receipt of copy of this order. No costs."

2.3 The respondent no.2 in compliance of the order dated 08.08.2014 of the Lucknow Bench, re-considered the representation dated 11.04.2011 of the applicant and vide impugned Annexure A-1 OM dated 04.12.2014 rejected the

request of the applicant for the upgradation of his ACR for the years 2005-06 and 2006-07. Aggrieved by the Annexure A-1 OM, the applicant has filed the instant O.A. praying for the reliefs as indicated in Para-1 (supra).

3. In support of his prayers in the O.A., the applicant has pleaded the following important grounds in the O.A.

i) The Reporting Officer had assessed the applicant as 'Very Good' for the year 2005-2006 but scored of the word 'very' and has inserted irrelevant information in the ACR to justify the downgrading. He has not cited any specific reasons in support of the downgrading. In his ACR for the year 2005-06, the applicant's work has been assessed as satisfactory. No reasons have been mentioned in regard to assigning below benchmark grading. The impugned Annexure A-1 OM dated 04.12.2014 is not a speaking order.

ii) The Lucknow Bench vide order dated 08.08.2014 in OA No.507/2012 filed by the applicant had directed respondent no.2 to decide the representation of the applicant dated 11.4.2011 through a reasoned and speaking order keeping in mind the ratio of law laid down by the Hon'ble Supreme Court in the case of **Ram Chander vs. Union of India & Ors.**, [(1986) 4 SCC 12]. In terms of the said ratio of law, the Appellate Authority was obliged to provide an opportunity of

personal hearing to the applicant before disposing of his appeal. This requirement of law has not been fulfilled by the respondents.

iii) The applicant has been associated with very important works. Never any deficiency in his work has been pointed out and communicated to him by his superiors. The Reporting Officer himself in the ACR of the applicant for the year 2006-07 has noticed that the output of the applicant and quality of work done by him during the period 2006-07 was satisfactory. The DoPT in its OM dated 13.04.2010 (Annexure A-17) has laid down guidelines in regard to consideration of representation by the competent authority vis-a-vis below benchmark grading in the ACRs. The OM clearly states that consideration of representation against the below benchmark grading in the ACR is a quasi-judicial exercise which would imply that the competent authority has to take into account the contentions of the officer concerned. The Hon'ble Supreme Court in the case of **Mahavir Prasad vs. State of UP**, AIR 1970 SC 1302 has observed that 'recording of reasons in support of a decision by quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy or reached on ground of policy or expediency'.

4. Pursuant to the notices, the respondents entered appearance and filed their reply. They have made the following important averments in the reply:-

4.1 The Lucknow Bench of the Tribunal in para (2) of its order dated 08.08.2014 in OA No.507/2012 filed by the applicant, has noted that applicant was not interested to contest the grading given to him in his ACR for the year 2003-04. Hence, prayer (i) cannot be adjudicated in the present O.A.

4.2 The Reporting Officer of the applicant for his ACRs for the years 2005-06 and 2006-07 was Shri R.K. Jain, the then Director (Technical), who has entered remarks like 'workable, good, just workable, very good, just adequate, just and fair and good' in different columns of these ACRs. On the basis of such remarks, the overall grading of 'Good' given in these two ACRs was in order. In consideration of the representation of the applicant dated 11.04.2011 against these two ACRs, Shri R.K. Jain vide his Annexure R-3 Note dated 07.09.2011 has given comprehensive justification in regard to the grading given by him.

4.3 The applicant's representation dated 11.04.2011 had been rejected by Respondent No.2 after getting inputs from the then Reporting and Reviewing Officers. The said

rejection was communicated to the applicant vide Annexure A-13 OM dated 09.11.2011. Challenging the OM dated 09.11.2011, the applicant filed an appeal dated 08.02.2011 before Secretary, Ministry of Water Resources, who is also the Chairman of the Governing Body of NWDA. The appeal was rejected by the Secretary, Ministry of Water Resources, vide letter dated 11.07.2013 (Annexure A-14) in terms of DoPT OM No.21011/1/77-Estt. dated 30.01.1978. The DoPT stipulates that only one representation against adverse remarks is allowed, which has already been availed by the applicant in filing his representation before the DG, NWDA. The applicant had challenged Annexure A-13 and Annexure A-14 orders before the Lucknow Bench of the Tribunal in OA No.507/2012, which was disposed of by the Tribunal vide order dated 08.08.2014 remitting back the matter to respondent no.2 - DG, NWDA to consider and decide the representation dated 11.04.2011 of the applicant by passing a reasoned and speaking order keeping in mind the ratio of law laid down by the Hon'ble Supreme Court in the case of **Ram Chander** (supra). In obedience thereof, the respondent no.2 has passed a reasoned and speaking order dated 04.12.2014 (Annexure A-1) rejecting the representation of the applicant. The applicant, thereafter, submitted an appeal dated 01.01.2015 against the Annexure A-1 order, addressed

to Hon'ble President of India. The said appeal has been rejected by respondent no.1 vide letter dated 24.03.2015 (Annexure A-2) stating that DG, NWDA has already complied with the direction given by the Tribunal in its order dated 08.08.2014.

5. The applicant filed a rejoinder to the reply filed on behalf of the respondents. In his rejoinder, besides reiterating the averments made in the OA, the applicant has stated that the Hon'ble Lucknow Bench of the Tribunal in its order dated 08.08.2014 had directed the respondents to dispose of his representation dated 11.04.2011 as per the ratio of law laid down by the Hon'ble Supreme Court in **Ram Chander** (supra), which, *inter alia*, stipulates providing of opportunity of personal hearing. The applicant has further stated that in passing the impugned Annexures A-1 and A-2 orders, the respondents have not given any opportunity of personal hearing to the applicant and hence the order of Hon'ble Lucknow Bench has not been appropriately complied with.

6. With the completion of the pleadings, the case was taken up for hearing the arguments of the parties on 03.05.2017. Arguments of the applicant as party in person and that of Shri R.N. Singh, learned counsel for the

respondents were heard. Both the parties by and large repeated their averments made in their respective pleadings.

7. We have given our thoughtful consideration to the arguments of the parties and have also perused the documents annexed thereto. The Lucknow Bench of this Tribunal in its order dated 08.08.2014 in OA-507/2012 (Annexure A-15) filed by the applicant has clearly noted that the applicant is not pressing his relief in regard to upgradation of his below benchmark ACR for the year 2003-04. In view of it, the relief 8 (i) prayed for by the applicant in the present OA becomes redundant and accordingly it is not considered.

8. The ACRs of the applicant for the years 2005-06 and 2006-07 had been written by the concerned Reporting and Reviewing Officers. From the copies of these ACRs available in the paper-book, it is apparent that these two ACRs had not gone to the Accepting Authority for entering its remarks. The Accepting Authority for the ACRs of the applicant was apparently DG, NWDA. As per the direction of the Lucknow Bench of this Tribunal vide its order dated 08.08.2014 in OA No.507/2012, DG, NWDA has considered the representation of the applicant dated 11.04.2011 and vide the impugned Annexure A-1 order has rejected it. The Annexure A-1 order is differently a reasoned and speaking order. For passing

this order, the DG, NWDA had collected the requisite information from the Reporting and Reviewing Officers who had written these two ACRs.

9. We have perused the judgment of the Hon'ble Apex Court in **Ram Chander** (supra). In that case the petitioner was employed as a Shunter Grade 'B' and was removed from service after having been found guilty of assaulting his immediate superiors. Since he did not participate in the enquiry, the enquiry officer proceeded ex-parte, examined the witnesses and found the charge proved. The Disciplinary Authority, namely, General Manager, agreed with the report of the enquiry officer and came to the provisional conclusion that the penalty of removal should be inflicted. He issued Show Cause Notice to the petitioner, who, in compliance showed cause but his explanation was not accepted. The General Manager imposed the penalty of removal from service. The petitioner's appeal under Railway Servants (Discipline & Appeal) Rules, 1968 was also dismissed. The Writ Petition filed against the dismissal order by the petitioner before the Hon'ble High Court of Delhi was also dismissed. The judgment of the Hon'ble High Court of Delhi and the dismissal order passed by the Railway were challenged by the petitioner in Civil Appeal No.1621/1986 before the Hon'ble Apex Court, who vide its judgment dated

02.05.1986 set aside the judgment of the Hon'ble High Court and the dismissal order passed by the Railway and directed the Railway to hear and dispose of the appeal after affording a personal hearing to the appellant and on merits by a reasoned and speaking order in conformity with the requirement of Rule 22 (2) of the Railway Servants (Discipline & Appeal) rules, 1968.

10. As observed in the earlier paras, the applicant had been given an opportunity by the respondents to represent against his below benchmark ACR gradings in his ACRs for the years 2005-06 and 2006-07 and after considering his representation dated 11.04.2011, the respondents vide their Annexures A-13 and A-14 orders rejected the representation. Since these rejection orders were not speaking orders, the Luckow Bench of this Tribunal directed the respondents to dispose of the applicant's representation dated 11.04.2011 against these two orders by passing a reasoned and speaking order, which has now been done by the respondents by way of passing the impugned Annexure A-1 order. In the matter of disposal of representation against below benchmark ACRs, there are only administrative instructions issued by the DoPT in their OM No.21011/1/2010-Estt.A dated 27th April, 2010 following the judgment of the Hon'ble Apex Court in **Dev Dutt v. Union of India & Ors.**, [(2008) 8 SCC 725]. There

are no statutory rules on this issue. The facts and circumstances of **Ram Chander** (supra) are quite different. In that case Rule 22 (2) of the Railway Servants (Discipline & Appeal) Rules, 1968 stipulated providing of opportunity of personal hearing to the concerned government servant. There are no similar rules in the matter of disposal of representations against the below benchmark ACRs. Admittedly, the Lucknow Bench of the Tribunal had directed the respondents to dispose of the representation of the applicant dated 11.04.2011 in terms of **Ram Chander** (supra). We find that the representation dated 11.04.2011 of the applicant is quite comprehensive. The impugned Annexure A-1 order, disposing of his representation has considered the issues raised by the applicant in the representation. Hence, granting of an opportunity of personal hearing would not have made any material difference as such.

11. In the conspectus of the discussions in the foregoing paras, we are of the view that the respondents have followed the extant instructions of the DoPT in the matter of below benchmark ACR grading of the applicant for the years 2005-06 and 2006-07 and have disposed of the representation dated 11.04.2011 vide impugned Annexure A-1 order dated 04.12.2004, which is a reasoned and speaking order. Hence

the impugned Annexure A-1 order and so also Annexure A-2 order do not call for any interference from this Tribunal. Accordingly, the OA is dismissed having been found devoid of any merit.

12. No order as to costs.

(K.N. Shrivastava)
Member (A)

(V. Ajay Kumar)
Member (J)

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