Central Administrative Tribunal
Principal Bench, New Delhi.

OA-1419/2013

New Delhi, this the 18th day of November, 2016.

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Shekhar Agarwal, Member (A)

Sh. KK Malhotra
Senior Research Officer
Additional Directorate General
Signal Intelligence
General Staff Branch
Army Headquarters, Ministry of Defence,
DHQ PO, New Delhi-110 011.   ...   Applicant

(through: Sh. Padma Kr. S. With Sh. K.K. Mishra)

Versus

1.   Union of India through
      Secretary, Ministry of Defence,
      South Block, New Delhi-110 011.

2.   Joint Secretary (Training) &
      Chief Administrative Officer,
      Ministry of Defence,
      E Block, DHQ PO,
      New Delhi.

3.   Additional Directorate General,
      Signal Intelligence,
      General Staff Branch,
      Army Headquarters, Ministry of Defence,
      DHQ PO, New Delhi-11.   ...   Respondents

(through Sh. Ashok Kumar)

ORDER (ORAL)

Hon'ble Mr. Justice Permod Kohli

While serving as Senior Research Officer (SRO), the applicant was served with a letter dated 23.07.2010 communicating to him below benchmark ACR grading for the period 2004-05 (01.04.2004-31.03.2005), 2005-06 (01.04.2005-31.03.2006), 2006-07 (01.04.2006-31.03.2007) and 2007-08 (01.04.2007-31.03.2008).

The applicant filed separate representations. The first representation dated 03.08.2010 was filed in respect to ACR for the period 2004-05, 2005-06 and 2006-07 whereas the second representation dated 05.08.2010 was filed in respect to ACR for the period 2007-08. Both these representations have been rejected vide the orders impugned herein.

2.   The first impugned order is dated 07.12.2010. The order reads as under:

> "Reference your representation dated 05 Aug 2010 submitted against the below-bench mark grading recorded in the ACR for the period 2007-08.
>
> 2.   Your representation for upgradation/modification of grading/remarks in the ACR for the period mentioned above has been duly examined/considered and the same has been rejected by the Competent Authority (copy enclosed).
>
> 3.   This is for your information."

The second impugned order is dated 19.10.2011. The said order also reads as under:

> "1.   Reference representation dated 03 Aug 2010 in r/o Sh KK Malhotra forwarded vide your office letter No 54177/A4(a)SI-1/35 dated 04 Aug 2010 regarding wrong initiation of APARs for the periods mentioned above.
>
> 2.   The representation of Sh Malhotra has been examined and it is stated that there is no merit in setting aside the APARs on grounds of wrong initiation. The APARs for the periods 2004-2005, 2005-2006 and 2006-2007 of Sh KK Malhotra, RO (now SRO) along with the gradings/remarks endorsed therein are retained as such.
>
> 3.   The officer may be informed accordingly."

3.   Learned counsel for the applicant submits that both these orders are non speaking and without any reason. Thus, they are not sustainable in law. Learned counsel for the respondents, however, submits that in the counter affidavit some reasons have been disclosed. It is a settled law that impugned order cannot be supplemented by the reasons in the counter affidavit as held

by Constitution Bench of Hon'ble Supreme Court in ***Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi & Ors. [1978 SCR (3) 272 or 1978 SCC (1) 405].***

4.   Even though an authority may be exercising its administrative jurisdiction, it is required to pass reasoned order in a case where such order has impact on civil rights of the person concerned. Thus, recording of reasons is *sine qua non* for passing of such kind of orders and unreasoned order is not sustainable in law notwithstanding the fact that it is based upon subjective satisfaction. It is also settled legal position that even subjective satisfaction must be on objective criteria.

5.   For the above reasons, both the impugned orders are hereby quashed. However, respondents are granted liberty to issue fresh orders by recording reasons. Let the exercise be completed within three months from the date of receipt of a certified copy of this order. OA stands disposed of.

(Shekhar Agarwal)   **(Justice Permod Kohli)**
    Member (A)   **Chairman**

/ns/